

**Quantification Settlement Agreement and  
Related Agreements and Documents**

**to which**

**State and Southern California Agencies are Signatories**

QUANTIFICATION SETTLEMENT AGREEMENT  
JOINT POWERS AUTHORITY  
CREATION AND FUNDING AGREEMENT

This Quantification Settlement Agreement Joint Powers Authority Creation and Funding Agreement ("Agreement") is dated for reference this 10<sup>th</sup> day of October, 2003 and made by and among the STATE OF CALIFORNIA acting by and through the DEPARTMENT OF FISH AND GAME ("State"), the COACHELLA VALLEY WATER DISTRICT, ("CVWD"), the IMPERIAL IRRIGATION DISTRICT, ("IID") and the SAN DIEGO COUNTY WATER AUTHORITY, ("SDCWA"). The State, CVWD, IID and SDCWA are sometimes referred to herein, individually and collectively as the "Party" or "Parties". This Agreement is the QSA JPA as referenced in the QSA and the Environmental Cost Sharing Agreement.

RECITALS:

A. The Department of Fish and Game is a state agency formed pursuant to California Fish and Game Code section 700, *et seq.*, and is authorized by the Legislature to enter into this agreement on behalf of the State.

B. The CVWD is a county water district organized under the California County Water District Law.

C. The IID is an irrigation district organized under the California Irrigation District Law.

D. The SDCWA is a county water authority organized under the California County Water Authority Act.

E. Each of the Parties herein is a public agency. Each of the Parties herein is authorized and empowered to contract with the other Parties for the joint exercise of powers under California Joint Exercise of Powers Act and Section 3 of 2003 Stats., ch. 613 (SB 654, Machado) ("SB 654"). A copy of SB 654 is attached to this Agreement as Exhibit A.

F. SB 654 established a mechanism to implement and allocate environmental mitigation cost responsibility among IID, CVWD, SDCWA, and the State for the implementation of the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement. Costs for environmental mitigation requirements up to and not to exceed a present value of \$133,000,000 shall be borne by IID, CVWD, and SDCWA, with the balance to be borne by the State. Similarly, SB 654 limits the responsibility for payments by IID, CVWD and SDCWA for Salton Sea restoration to a present value of \$30,000,000, in addition to any payments under the provisions of subdivision (c) of Section 2081.7 of the Fish and Game Code, subdivision (f) of Section 1013 of the Water Code, and subdivision (b) of Section 3 of SB 654.

G. IID, CVWD and SDCWA are entering this Agreement in reliance upon, and this Agreement is intended to implement, the provisions of SB 654 which allocates the costs and authorizes the State to accept responsibility for certain environmental mitigation costs. This

Agreement creates the Quantification Settlement Agreement Joint Powers Authority and establishes the respective obligations and limitations of each of the Parties for funding of the joint powers authority and the costs of environmental mitigation. In addition, this agreement establishes certain obligations and limitations related to the costs of Salton Sea Restoration.

H. On or about October 10, 2003, CVWD, IID, and The Metropolitan Water District of Southern California executed that certain Quantification Settlement Agreement ("QSA") which settles a variety of long-standing Colorado River disputes regarding the priority, use and transfer of Colorado River water, establishes the terms for the further distribution of Colorado River water among those entities for a period of time based upon the water budgets set forth therein and includes as a necessary component thereof the implementation of the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement. These conserved water transfers and the QSA are critical components of the State's efforts to comply with the California Limitation Act of 1929, Section 4 of the Boulder Canyon Project Act of 1928 and to implement the California Constitutional mandate of Article X, Section 2. Neither the QSA or these conserved water transfers could be implemented without compliance with extensive state and federal environmental laws, and this Agreement including the State Obligation is the principal mechanism for ensuring that required mitigation under those laws for these transfers will be fully paid for.

I. The terms of the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement are subject to the implementation of a mechanism to resolve and allocate environmental mitigation responsibility between those Parties on the terms and conditions set forth in that certain Environmental Cost Sharing, Funding and Habitat Conservation Plan Development Agreement among CVWD, IID, and SDCWA ("ECSA"). A copy of the ECSA is attached to this Agreement as Exhibit B.

J. This Agreement is necessary to (1) allocate among the State, the CVWD, the IID and the SDCWA Environmental Mitigation Costs; (2) make certain and limit the financial liability of the CVWD, the IID and the SDCWA for Environmental Mitigation Costs; (3) make certain and limit the financial liability of the CVWD, the IID and the SDCWA for Salton Sea restoration costs; and (4) allocate the remaining financial and other risks associated with the Environmental Mitigation Requirements and Salton Sea restoration costs to the State.

K. CVWD, IID and SDCWA have agreed to substantial commitments of water, money, and other valuable resources to implement the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement, among which are commitments of funds to mitigate environmental impacts of those agreements and to promote restoration of the Salton Sea. These commitments would not have been made without the promises of the State as documented in this Agreement. In addition, IID, CVWD and SDCWA are relying upon this Agreement in entering into other agreements with third parties, including without limitation, contracts with landowners and farmers in the Imperial Valley who are to produce conserved water.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND THE PROVISIONS, CONDITIONS AND TERMS PROVIDED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

## ARTICLE I

### DEFINITIONS AND PRELIMINARY PROVISIONS

#### 1.1 Definitions.

As used in this Agreement, capitalized terms not defined below shall have the meaning set forth in the ECSA and, if not defined therein, in the QSA.

a. “Canal Lining Project” shall mean the design and construction of lining in portions of the All-American Canal and the Coachella Canal, as authorized by Public Law 100-675, which qualifies for funding pursuant to the California Water Code sections 12560, *et seq.* as amended by Section 1 of 2003 Stats., ch. 613 (SB 654, Machado).

b. “Environmental Mitigation Cost Limitation” shall mean (i) a present value equal to \$133,000,000 of the payments by the CVWD, the IID and the SDCWA pursuant to this Agreement. Environmental Mitigation Cost Limitation with respect to the CVWD, the IID or the SDCWA, separately, shall mean the individual obligation for a portion of the amount of \$133,000,000 allocated to each agency respectively by Article IX of this Agreement. When used in the context of the Environmental Mitigation Cost Limitation, the words “liable” or “liability” mean any responsibility or obligation arising out of or related to any claim, demand, cause of action, cost, expense, condition or restriction, and shall include, without limitation, damages, fees, fines, penalties, assessments, permit conditions, litigation cost, attorneys’ fees, administrative requirements, in-kind contributions, adaptive management requirements, and cost-sharing requirements.

c. “Restore” and “Restoration” shall have the same meaning as such terms are used in the QSA Legislation.

d. “Salton Sea Restoration Limit” shall mean a present value equal to \$30,000,000 of the payments made by the CVWD, the IID or the SDCWA to the Salton Sea Restoration Fund. Salton Sea Restoration Limit with respect to the CVWD, the IID or the SDCWA, separately, shall mean the individual obligation for a portion \$30,000,000 limit for each agency respectively by Article XIV of this Agreement. When used in the context of the Salton Sea Restoration Limit, the words “liable” or “liability” mean any responsibility or obligation arising out of or related to any claim, demand, cause of action, cost, expense, condition or restriction, and shall include, without limitation, damages, fees, fines, penalties, assessments, permit conditions, litigation cost, attorneys’ fees, administrative requirements, in-kind contributions, adaptive management requirements, and cost-sharing requirements. The Salton Sea Restoration Limit is exclusive of Salton Sea restoration funding provided pursuant to the provisions of subdivision (c) of Section 2081.7 and subdivision (f) of Section 1013 of the Water Code.

e. “State” shall mean the State of California.

## 1.2 Present Value of Amounts.

The amounts stated in subdivisions b and c of Section 1.2 and in Articles IX and XIV are in 2003 dollars and are expressed as present-value totals. The present value of these amounts shall be calculated using a six percent discount factor.

## ARTICLE II

### CREATION OF THE QUANTIFICATION SETTLEMENT AGREEMENT JOINT POWERS AUTHORITY

#### 2.1. Creation of Agency.

There is hereby created a public agency known as the "Quantification Settlement Agreement Joint Powers Authority" (the "Authority"). The Authority is formed by this Agreement pursuant to the provisions of the Joint Exercise of Powers Act, being Article I, Chapter 5, Division 7, Title 1 of the Government Code of the State of California commencing at Section 6500, as supplemented by 2003 Stats., ch. 613 (SB 654 Machado). The Authority is a public agency separate from the Parties.

#### 2.2. Purpose of Authority.

The purpose of this Authority is to pay for Environmental Mitigation Requirements and Environmental Mitigation Costs by and through the collection, holding, investing and disbursing of funds.

## ARTICLE III

### POWERS OF THE AUTHORITY

#### 3.1 General Powers.

The governing body of the Authority shall have the power, in the Authority's own name, and as necessary or convenient to implementation of the Authority's purpose, to do any and all of the following:

- (a) To make and enter into contracts, including, without limitation contracts with one or more of the Parties.
- (b) To employ agents, employees, attorneys, consultants, advisors, and independent contractors.
- (c) To incur debt, liabilities or obligations provided, however, that no debt, liability or obligation shall directly or indirectly result in a liability of the CVWD, the IID or the SDCWA in excess of the Environmental Mitigation Requirement Cost Limitation or the Salton Sea Restoration Limit. The Authority may issue revenue bonds, contracts of indebtedness,

certificates of participation and other finance instruments pursuant to any State statute applicable to any of the Parties. Action under this subdivision requires the affirmative vote of three Commissioners, including the Commissioner representing the State.

(d) To disburse funds to one or more of the Parties to pay for the implementation of the Environmental Mitigation Requirements, in accordance with a budget adopted by the governing body.

(e) To sue and be sued in its own name.

(f) To accumulate reserve funds for the purposes herein.

(g) To apply for, receive and utilize gifts, grants, and loans from any source available.

(h) To acquire, by grant, lease, purchase, bequest, devise, and hold, enjoy, lease or sell, or otherwise dispose of real and personal property.

(i) To invest surplus funds pursuant to Government Code § 6509.2, subject to Government Code §§ 53600 *et seq.* Interest or other earnings on funds contributed for Environmental Mitigation Costs shall be used exclusively for the payment of such costs.

(j) To adopt rules, policies, by-laws, regulations and procedures governing the operation of the Authority consistent with this Agreement.

(k) To take other actions necessary or convenient for the full exercise of the powers granted by this Agreement.

### 3.2 Limitation on Powers.

The Environmental Mitigation Cost Limitation and the Salton Sea Restoration Limit have been established pursuant to subparagraph (1) of subdivision (b) and subdivision (c) of Section 3 of SB 654. The Authority shall have no power to incur any debt, liability or obligation that would directly or indirectly result in any liability to the CVWD, the IID or the SDCWA in excess of the Environmental Mitigation Cost Limitation or the Salton Sea Restoration Limit. The liability for any Environmental Mitigation Requirements in excess of the Environmental Mitigation Cost Limitation or any funding obligation or in-kind contributions of any kind for restoration of the Salton Sea, including federal cost-sharing or other federal requirements, shall be borne exclusively by the State and sources other than the CVWD, the IID or the SDCWA, except for restoration funding provided pursuant to the requirements of subdivision (c) of Section 2081.7 and subdivision (f) of Section 1013 of the Water Code.

### 3.3 Limitation of Liability of Parties.

The debts, liabilities and obligations of the Authority shall be the debts, liabilities and obligations of the Authority alone and not of the Parties or any Party.

### 3.4 Contracts.

The procedures and requirements applicable to contracts of the SDCWA shall apply to contracts of the Authority, provided, however, that all contracts shall be approved by the Commission.

### 3.5 Exercise of Powers.

The Authority shall be subject to the same restrictions upon the manner of exercising its powers as the restrictions upon the manner of exercising the powers of the SDCWA, unless otherwise provided herein.

## ARTICLE IV

### TERM

#### 4.1 Effective Date.

This Agreement shall become effective and the Authority shall be created at the latter of the following events: (a) when the governing bodies of all of the Parties to this Agreement have authorized execution of this Agreement; or (b) January 1, 2004.

#### 4.2 Termination Date.

This Agreement shall terminate on the later of (1) the mutual Termination Date of the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement, or (2) when all Environmental Mitigation Requirements have been satisfied and the costs thereof fully paid, unless terminated sooner by written consent of each of the Parties evidenced by a certified copy of a resolution of its respective governing bodies.

#### 4.3 Limitation on Withdrawal.

No Party to this Agreement may withdraw from the Authority without the express written consent or approval of all of the remaining Parties. Any attempted withdrawal by a Party not made in accordance with this Agreement shall be deemed a breach of this Agreement and the breaching Party shall be liable to the non-breaching Parties for the remainder of any sums owed by the Party under the ESCA and this Agreement, the Party's allocation of administrative expenses for the fiscal year in which the breach occurred and for the following fiscal years and for any damages for such breach.

ARTICLE V  
GOVERNING BOARD

5.1    The Commission.

The governing body of the Authority shall be known as the "Commission" for the Authority. The Commission shall be composed of four (4) members ("Commissioners"), one from each Party to this Agreement. All of the power and authority of the Authority shall be exercised by the Commission.

5.2    Appointments to the Commission.

The CVWD, the IID and the SDCWA shall each designate and appoint one (1) member of its governing board to act as its Commissioner and one (1) member of its governing body to act as its alternate Commissioner. In lieu of appointing a member of its governing body, the CVWD, the IID or the SDCWA may appoint its general manager or a member of its staff as a Commissioner or alternate Commissioner. The manner of appointment of the Commissioner and alternate Commissioner shall be determined by the appointing agency, subject to the consent of the agency's governing body. The Director of the Department of Fish and Game or his or her designee shall be the Commissioner representing the State. The Director of the Department shall also designate an alternate. During any absence of the Commissioner, the alternative Commissioner shall act in his place. Each Commissioner (and alternate), other than the Commissioner representing the Department shall serve at the pleasure of the governing body of the appointing Party and may be removed at any time, with or without cause, in the sole discretion of the Party's governing body.

5.3    Commissioners to Serve Without Compensation from Authority.

The Commissioners and alternate Commissioners shall serve without compensation from the Authority. Each Party shall be responsible for paying the expenses of the Commissioner and alternate Commissioner of the Party incurred in connection with Authority business according to the law and policies applicable to the Party.

5.4    Resignation of Commissioners.

Any Commissioner or alternate Commissioner may resign at any time by giving notice to the Chairperson of the Authority and the presiding officer of the Party. Any such resignation shall be effective upon receipt of such notice or at any later time specified in the notice.

5.5    Vote by Commissioners.

Unless otherwise disqualified pursuant to California law because of a personal financial or other conflict of interest, a Commissioner, or an alternate Commissioner when acting in the absence of the Commissioner, may vote on all matters of Authority business, including, without limitation, contracts between the Authority and the appointing Party.



5.6 Local Conflict of Interest Code.

The Commission shall adopt a local conflict of interest code pursuant to the provisions of the Political Reform Act.

ARTICLE VI

CONDUCT OF MEETINGS

6.1 Meetings.

The Commission of the Authority shall establish a regular meeting schedule. At its first meeting, the Commission shall provide for the time and place of holding its regular meetings. Special meetings may be called at the request of the Chairperson or of a majority of the Commissioners. Notice of and the agenda for all meetings shall be furnished in writing to each Commissioner (and alternate) and to each Party to this Agreement. The meetings of the Commission shall be noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act as set forth in the California Government Code. The Commission may adopt supplemental rules of procedure for the conduct of meetings.

6.2 Minutes.

The Secretary of the Authority shall cause to be kept the minutes of all Commission meetings, and shall cause a copy of these minutes, along with copies of all ordinances and resolutions enacted, to be forwarded to each of the Parties hereto.

6.3 Quorum.

Three members of the Commission shall constitute a quorum for the transaction of business. In the absence of a Commissioner, the alternate Commissioner, if present, shall be counted for purposes of determining a quorum.

6.4 Actions.

Unless otherwise provided herein, all actions of the Commission shall be passed upon the affirmative vote of three Commissioners. Actions may be taken by resolution or motion recorded in the minutes.

## ARTICLE VII

### OFFICERS

#### 7.1 Chairperson.

The Commissioner representing the State shall act as Chairperson of the Commission. The Chairperson is the presiding officer of the Commission. The Chairperson shall be recognized as the head of the Authority for all ceremonial and public purposes, and for the signing of legal instruments and documents of the Authority. At meetings of the Commission, the Chairperson shall not be deprived of any of the rights and privileges of a Commissioner by reason of being presiding officer. The alternate Commissioner representing the State shall serve as Chairperson in the absence of the State's Commissioner.

#### 7.2 Vice-chairperson.

The Commission may select one of its members to serve as Vice-chairperson. The Vice-chairperson is the presiding officer of the Commission in the absence of the Chairperson. The Vice-chairperson shall perform the duties of the Chairperson whenever the Chairperson is absent, temporarily incapacitated from performing the duties of the Chairperson, or as may be delegated by the Chairperson. The Vice-chairperson shall serve at the pleasure of the Commission.

#### 7.3 Additional Officers.

The Commission may appoint such additional officers to perform such duties and shall have such powers as the Commission may, from time to time, determine.

#### 7.4 Service of Vice-chairperson or Additional Officers.

Subject to the provisions set forth herein, the officers shall be appointed annually in January. Officers shall assume the duties of their offices immediately after their appointment and shall hold office until their successors are appointed, except in the case of their earlier removal or resignation. Vacancies shall be filled by appointment of the Commissioners and such appointee shall hold office until the appointment of his or her successor.

## ARTICLE VIII

### MANAGEMENT

#### 8.1 Chief Administrative Officer.

The General Manager of the SDCWA or an employee of the SDCWA designated by the General Manager of the SDCWA shall serve as the Chief Administrative Officer of the Authority. Such service shall be without compensation by the Authority. The Chief Administrative Officer is responsible for the efficient administration of the affairs of the Authority. The Chief Administrative Officer shall serve as secretary to the Commission and

shall keep the minutes and records of the Authority. The records of the Authority are subject to the California Public Records Act. The SDCWA shall not receive economic remuneration from the Authority or the other Parties for provision of administrative management services under this paragraph.

#### 8.2 Treasurer.

The Treasurer of the SDCWA shall serve as the treasurer of the Authority. The treasurer shall be the depository and have custody of all of the money of the Authority from whatever source. The duties of the treasurer shall be performed in accordance with Government Code § 6505.5 without compensation or charge to the Authority, provided, however, that the treasurer may contract with a certified public accountant, public accountant or other qualified independent auditor to make an annual audit of the accounts and records of the Authority as provided in Government Code § 6505 and may charge the costs thereof to the Authority as a reimbursable expense. The treasurer may contract with qualified investment, financial and other advisors and may charge the costs thereof to the Authority as a reimbursable expense. Except as otherwise provided herein, the SDCWA shall not receive economic remuneration from the Authority or the other Parties for provision of treasurer services under this paragraph. The Treasurer may invest funds of the Authority according to an investment policy of the Commission adopted pursuant to Government Code §§ 53600 *et seq.* Until such an investment policy is adopted, the investment policy of the SDCWA shall apply to investment of Authority funds.

#### 8.3 Legal Counsel.

The chief legal counsel of CVWD shall serve as legal counsel to the Authority. In the event of an ethical conflict of interest arising from a direct dispute between the Authority and any of the Parties, the Authority shall retain independent legal counsel the cost of which shall be borne by the Parties. The CVWD shall not receive economic remuneration from the Authority or the other Parties for provision of legal services under this paragraph. Litigation services, if needed, are to be provided subject to a contract with qualified counsel after approval by the Commission, and shall be paid pursuant to Section 10.4.

#### 8.4 Agent for Service of Process.

The Chief Administrative Officer of the Authority is the Authority's agent for service of process.

#### 8.5 Authority's Business Offices.

Authority's business office shall be located at the principal place of business of the SDCWA, which on the date of this agreement is 4677 Overland Ave., San Diego, CA 92123. SDCWA shall make its personnel available, during the term of this Agreement as necessary to perform the secretarial, clerical, accounting and administrative duties of the Authority without remuneration, cost or expense of any kind to the Authority or the other Parties, except as otherwise provided in Article X.

8.6 Roster of Public Agencies.

The Chief Administrative Officer shall register the Authority in the roster of public agencies pursuant to Government Code § 53051.

ARTICLE IX

CONTRIBUTIONS FOR ENVIRONMENTAL  
MITIGATION REQUIREMENTS

9.1 Environmental Mitigation Contributions.

The CVWD, the IID and the SDCWA shall make contributions to the Authority having a present value of the following amounts:

CVWD	\$36,717,791
IID	\$30,000,000
SDCWA	\$52,220,859

The IID shall also make an additional contribution pursuant its obligation under Section 4.1(2) of the ECSA having a present value of \$14,061,350. Payments shall be made according to the schedules attached as Exhibits C-1, C-2 and C-3, unless paid in advance.

9.2 State Obligation.

The State is solely responsible for the payment of the costs of and liability for Environmental Mitigation Requirements in excess of the Environmental Mitigation Cost Limitation. The amount of such costs and liabilities shall be determined by the affirmative vote of three Commissioners, including the Commissioner representing the State, which determination shall be reasonably made. The State obligation is an unconditional contractual obligation of the State of California, and such obligation is not conditioned upon an appropriation by the Legislature, nor shall the event of non-appropriation be a defense.

9.3 Remaining Environmental Mitigation Costs.

The State shall have the rights under Section 4.2(2) of the ECSA to reduce its possible obligation to pay Remaining Environmental Mitigation Costs.

9.4 Environmental Mitigation Costs Following Termination of 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement.

The Authority shall have the rights and obligation under Section 4.3(3) and (4) of the ECSA.

## 9.5 Adjustment of Payment Schedules.

The CVWD, the IID or the SDCWA may adjust its respective payment schedule identified in Exhibit C-1, C-2 or C-3 so long as the adjustment does not affect the Authority's ability to pay Environmental Mitigation Costs subject to Environmental Mitigation Cost Limitation. If the Authority issues debt, the Party or Parties whose schedule of payments provides the revenue to repay the debt shall (i) reimburse the Authority for the amount, if any, debt service payments exceed the amount required if the Authority borrowed money at an annual interest rate of 6% compounded annually, and (ii) shall receive a credit against its schedule of payments for the amount, if any, debt service payments are less than they would be if the Authority had borrowed money at an annual rate of 6% compounded annually. Payments actually made by a Party toward Environmental Mitigation Costs after October 10, 2003 and before the Effective Date of this Agreement shall be credited to that Party's payment obligation under this Agreement. Additionally, SDCWA shall receive a credit toward its payment obligations under this Agreement, not to exceed a present value of \$3,118,000, for payments made to the Bureau of Reclamation for satisfaction of Environmental Mitigation Requirements pursuant to that agreement among the Bureau of Reclamation, MWD, and SDCWA, dated October 10, 2003, regarding responsibility for implementation of Conservation and Mitigation Measures for the Colorado River described in a U.S. Fish and Wildlife Service Biological Opinion dated January 12, 2001.

## ARTICLE X

### BUDGET, CONTRIBUTION FOR THE COST AND EXPENSES OF THE AUTHORITY AND PAYMENTS BY THE AUTHORITY

#### 10.1 Annual Budget.

As soon as possible after the formation of the Authority and annually thereafter, the Commission shall adopt a budget for the payment of Environmental Mitigation Costs. The budget shall be prepared in sufficient detail to constitute an operating outline for contributions to be made by the Parties and expenditures to be made during the ensuing year to pay for the Environmental Mitigation Costs. The budget shall include payments to IID for Salton Sea mitigation water consistent with Exhibit D. The affirmative vote of three Commissioners, including the Commissioner representing the State, is required for action under this section, and the approval of each shall not be unreasonably withheld after giving meaningful consideration to the need for timely implementation of any Environmental Mitigation Requirement and the appropriate procurement or maintenance of any permit, approval, authorization, or other requirement, of any Environmental Mitigation Requirement.

#### 10.2 Financing Plan.

The Commission may adopt a long-term financing plan to assure that sufficient funds are available to meet the reasonably expected annual costs of paying for the Environmental Mitigation Requirements. In the event that the Authority is required to issue debt, in any form, the Party or Parties whose schedule of payments provides the revenue to repay the debt shall incur the costs of issuance and the adjustments as provided for in Section 9.3. The affirmative

vote of three Commissioners, including the Commissioner representing the State, is required for action under this section.

#### 10.3 Reimbursement to Parties of Direct Costs Incurred for Environmental Mitigation.

A Party that incurs Direct costs for Environmental Mitigation Costs under the approved budget will be reimbursed by the Authority. Reimbursement shall be made only upon submission of a cost report signed by the treasurer or controller of the Party and determination of the Authority that the report substantially conforms to the requirements of this Section. The cost report shall be in a form and contain the information specified by the Commission. The cost report shall be based upon proper accounting records maintained by the Party. The accounting records shall be open to inspection by the Authority or any other Party. The Authority's determination regarding a cost report shall be made within thirty days of submission. Reimbursement shall be made by the Authority within thirty days following determination of the Authority that the report conforms with the requirements of this section. If the Authority determines that a report does not comply with the requirements of this section, the Party submitting the report may submit a revised report, which shall then be considered in the same manner as an initial report. If any portion of an approved reimbursement is not timely paid, the delinquent amount will bear interest at the rate earned by the Authority on its investments, but not to exceed twelve percent interest per annum compounded monthly. Direct costs shall mean Costs, other than out-of-pocket costs, as defined in the ESCA, but shall not include a Party's administrative costs, overhead costs, staff costs, losses of revenue from any source, other opportunity costs of any kind and other similar indirect costs as determined by the Commission not inconsistent with the ESCA.

#### 10.4 Environmental Litigation Costs.

Environmental Litigation Costs shall be paid as set forth in Section 3.2 of the ECSA.

### ARTICLE XI

#### CONTRIBUTION PROCEDURE FOR AMOUNTS EXTRAORDINARY ADMINISTRATIVE AND OTHER REIMBURSABLE EXPENSES

#### 11.1 Extraordinary Administrative and Other Reimbursable Expenses.

The Commission may, upon request by the SDCWA reimburse the SDCWA for extraordinary administrative costs and other reimbursable expenses incurred on behalf of and at the specific request of the Authority. The Commission shall pay for legal, accounting, and other special professional services employed by the Authority and not otherwise provided by a Party. Upon authorization of such expenses by the Commission, each Party shall provide for equal contributions toward the total amount of the approved expenditure. Contributions for extraordinary administrative costs shall be in addition to the contributions for the payment of Environmental Mitigation Requirements and shall not count towards the Environmental Mitigation Cost Limitation.

## 11.2 Time of Payment.

The contribution of each Party for allowed costs under Section 11.1 shall be billed quarterly and due and payable thirty (30) days after receipt of a billing therefor from the Authority. Unpaid contributions shall bear interest at the legal rate of interest from the date due to the date paid.

# ARTICLE XI

## ACCOUNTING

## 12.1 Fiscal Year.

The fiscal year of the Authority shall be from July 1 of a year to June 30 of the following year.

## 12.2 Books and Accounts.

Full books and accounts shall be maintained by the treasurer in accordance with practices established by or consistent with those utilized by the Controller of the State of California for like public agencies. Subject to the provisions of paragraph 8.2, the treasurer of the Authority shall comply strictly with the requirements of the statutes governing joint power agencies, Chapter 5, Division 7, Title 1 of the Government Code, commencing with Section 6500.

## 12.3 Filing Annual Audit.

The annual audit of the accounts of the Authority shall be filed with each Party no later than fifteen (15) days after receipt of the audit by the Commission.

# ARTICLE XIII

## DISSOLUTION OR TERMINATION

## 13.1 Distribution of Residual.

Dissolution or termination shall not relieve any Party of its obligation to pay for Environmental Mitigation Requirements under this Agreement. Upon dissolution or termination of the Authority any residual funds remaining after payment in full of all Environmental Mitigation Requirements shall be distributed to the Salton Sea Restoration Fund, and any remaining funds due from a Party shall be paid by that party directly to the Salton Sea Restoration Fund.

13.2 Manner of Distribution.

The distribution of assets may be made in kind or assets may be sold and the proceeds thereof distributed to a Party at the time of withdrawal or to the Parties at the time of dissolution.

ARTICLE XIV

FUNDING LIMITATION

14.1 Funding Limitation for Environmental Mitigation Requirements.

The liability of the CVWD, the IID and the SDCWA for Environmental Mitigation Requirements or Environmental Mitigation Costs shall not exceed the Environmental Mitigation Cost Limitation. The State shall defend, indemnify and hold harmless the CVWD, the IID and the SDCWA, individually or collectively as the case may be, with respect to any Environmental Mitigation Requirement or Environmental Mitigation Cost which exceeds the Environmental Mitigation Cost Limitation.

14.2 Cooperation Regarding State Obligation.

If the Authority anticipates that the Environmental Mitigation Cost Limitation will be exceeded within two years, then the Authority shall submit a written notice to the State stating the reasons for that anticipation, as well as estimates of the projected cost of remaining Environmental Mitigation Requirements. The State will seek, with the support of the other Parties, to obtain Legislative appropriation of funds sufficient to satisfy the State obligation, if any, for costs of the Environmental Mitigation Requirements as soon as it appears that the expenditures of the Authority are within \$5,000,000 of the Environmental Mitigation Requirement Cost Limitation, so long as the Authority has encumbered the total amount owed pursuant to Article IX by the CVWD, the IID and the SDCWA.

14.3 Funding Limitation for Salton Sea Restoration Costs.

In accordance with this Agreement and as required by the State agency responsible for administration of the Salton Sea Restoration Fund, the CVWD, the IID and the SDCWA shall make contributions to the Salton Sea Restoration Fund having a present value of the following amounts:

CVWD	\$ 8,282,209
IID	\$ 9,938,650
SDCWA	\$11,779,141

IID's payments to the Salton Sea Restoration Fund shall not exceed in any year the amounts set forth on Exhibit E., unless IID consents.

The liability of the CVWD, the IID and the SDCWA for Salton Sea restoration costs shall not exceed the Salton Sea Restoration Limit. The State shall defend, indemnify and hold harmless the CVWD, the IID and the SDCWA, individually or collectively as the case may be,



with respect to any liability, requirement, expense, cost or obligation for restoration of the Salton Sea the cost of which exceeds the Salton Sea Restoration Limit.

## ARTICLE XV

### GENERAL PROVISIONS

#### 15.1 Governing Law.

This Agreement is entered into in the Counties of Riverside, Imperial and San Diego, California and shall be governed by and construed in accordance with the laws of the State of California.

#### 15.2 Severability and Waiver.

In the event that any term or condition of this Agreement is determined to be invalid, illegal or otherwise unenforceable, this Agreement shall be terminated unless the Parties otherwise consent to continuation of the Agreement without the severed provision. If the CVWD, the IID, or the SDCWA have made payments or incurred unreimbursed Direct costs for the Environmental Mitigation Requirements or for the Salton Sea Restoration Fund as provided in this Agreement, then the obligations of the State under Sections 9.2, 14.1 or 14.3 shall remain in full force and effect as to the party making such contribution notwithstanding the severance of any provision, or termination of this Agreement pursuant to this Section. Lack of enforcement of any term or condition of this Agreement shall not be construed as a waiver of any rights conferred by such term or condition. Unless otherwise agreed to in writing, the failure of any Party to require the performance by the other Party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver of any provision hereof on one occasion be taken or held to be a waiver of the provision itself.

#### 15.3 Binding Effect.

This Agreement shall be binding on the Parties and their respective successors and assigns, provided that assignment of this Agreement shall require consent of the other Parties.

#### 15.4 Authority to Execute.

Any person signing this Agreement represents that he/she has full power and authority to do so, and, that his/her signature is legally sufficient to bind the Party on whose behalf he/she is signing.

#### 15.5 Integrated Agreement.

This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes any prior understanding between the Parties, except as set forth herein, whether written or oral. This Agreement can be amended only in writing signed by the Parties.

15.6 Time of the Essence.

Time is of the essence of this Agreement.

15.7 Notices.

Any communication, notice or demand of any kind whatsoever which any Party may be required or may desire to give to or serve upon the other Party shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

State of California     c/o Department of Fish and Game  
                                 1416 Ninth Street, 12<sup>th</sup> Floor  
                                 Sacramento, CA 95814

CVWD:                    Coachella Valley Water District  
                                 Attention: General Manager/Chief Engineer  
                                 P. O. Box 1058  
                                 Coachella, CA 92236

for personal or overnight delivery:

Coachella Valley Water District  
Attention: General Manager/Chief Engineer  
Avenue 52 and Highway 111  
Coachella, CA 92236

Telephone: 760-398-2651  
Facsimile: 760-398-3711

Copy to:                Gerald D. Shoaf, Esq.  
                                 Steven B. Abbott, Esq.  
                                 Redwine and Sherrill  
                                 1950 Market Street  
                                 Riverside, CA 92501-1720  
                                 Telephone: 909-684-2520  
                                 Facsimile: 909-684-9583

IID: Imperial Irrigation District  
Attn: General Manager  
P.O. Box 937  
Imperial, CA 92251  
Telephone: 760-339-9477  
Facsimile: 760-3339-9392

for personal or overnight delivery:

Imperial Irrigation District  
Attn: General Manager  
333 E. Barioni Boulevard  
Imperial, CA 92251

Copy to: John P. Carter  
Horton, Knox, Carter & Foote  
895 Broadway  
El Centro, CA 92243  
Telephone: 760-482-9651  
Facsimile: 760-370-0900

SDCWA: San Diego County Water Authority  
Attn: General Manager  
4677 Overland Ave.  
San Diego, CA 92123  
Telephone: 858-522-6780  
Facsimile: 858-522-6562

Copy to: San Diego County Water Authority  
Attn: General Counsel  
4677 Overland Ave.  
San Diego, CA 92123  
Telephone: 858-522-6790  
Facsimile: 858-522-6562

Any Party may change its address for notice by written notice given to the other Parties in the manner provided in this subsection 15.7. Any such communication, notice or demand shall be deemed to have been duly given or served on the date personally served, if by personal service; one (1) day after the date of confirmed dispatch, if by electronic communication, or three (3) days after being placed in the U.S. mail, if mailed.

#### 15.8 Further Acts.

Each Party agrees to perform any further acts and to execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

#### 15.9 Interpretation.

The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question.

#### 15.10 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to another counterpart identical thereto, except for having additional signature pages executed by another Party to this Agreement attached thereto.

#### 15.11 Third Party Beneficiaries

This Agreement, other than with respect to Section 9.2, is made solely for the benefit of the Parties hereto and their respective successors and assigns. No other person or entity may have or acquire any right by virtue of this Agreement.

#### 15.12 Additional Parties.

Additional parties may join this agreement only upon the amendment of this agreement consented to by all the existing Parties.

#### 15.13 Remedies.

Each Party shall have all remedies available at law or in equity to enforce the terms of this Agreement. The State shall have the power to sue and be sued in any court of competent jurisdiction.

#### 15.14 Joint Defense.

The Parties and the Authority will cooperate, proceed with reasonable diligence, and use reasonable best efforts to defend any lawsuit or administrative proceeding challenging the validity or enforceability of any terms of this Agreement, or any Party's right to act in accordance with any of the terms of this Agreement. Each Party will bear its own costs of participating and representation in any such defense.

#### 15.15 No Waiver of Sovereign Immunity.

Notwithstanding any other provision of this Agreement, nothing herein is intended to constitute consent by the State of California or any of its departments, agencies, commissions, or boards to suit in any court described in Article III of the U.S. Constitution. This Agreement shall not waive, or be interpreted as waiving, the State of California's sovereign immunity under the

Eleventh Amendment or any other provision of the U.S. Constitution in any present or future judicial or administrative proceeding.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the day and year hereinafter indicated.

STATE OF CALIFORNIA, acting by and through the Department of Fish and Game

By Robert C. Wright  
Title \_\_\_\_\_

Attest:

By \_\_\_\_\_

Approved as to Form and Content:

By \_\_\_\_\_

COACHELLA VALLEY WATER DISTRICT, a California county water district

By Steven Robbins  
| Steven Robbins  
Its General Manager/Chief Engineer

Approved as to Form and Content:

REDWINE AND SHERRILL

By Sherrill

IMPERIAL IRRIGATION DISTRICT, a California irrigation district

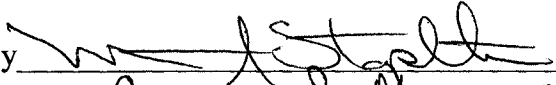
By PRESIDENT  
Its \_\_\_\_\_

By Gloria A. Rivera  
Its Secretary

Approved as to Form and Content:

By [Signature]

SAN DIEGO COUNTY WATER  
AUTHORITY

By   
Its General Manager

By \_\_\_\_\_  
Its \_\_\_\_\_

Approved as to Form and Content:

By 

## **EXHIBIT A**

EXHIBIT A

SB 654 (MACHADO)



**Senate Bill No. 654**

**CHAPTER 613**

An act to amend Section 12562 of the Water Code, and to amend Section 1 of Chapter 617 of the Statutes of 2002, relating to water, and making an appropriation therefor.

[Approved by Governor September 29, 2003. Filed  
with Secretary of State September 29, 2003.]

**LEGISLATIVE COUNSEL'S DIGEST**

**SB 654, Machado. Water: Salton Sea: Colorado River.**

(1) Existing law appropriates General Fund moneys to, among other things, line portions of the All American Canal and the Coachella Branch of the All American Canal. Existing law requires the lining projects to be completed not later than December 31, 2006, or such later date as may be required by extraordinary circumstances.

This bill would make legislative findings as to the extraordinary circumstances that prevent the lining projects from being completed by December 31, 2006, and would extend the date to December 31, 2008.

(2) Existing law makes legislative findings concerning the Salton Sea and a Quantification Settlement Agreement, including a finding that species previously designated as fully protected may be taken during activities intended to meet the state's commitment to reduce its use of Colorado River water, as long as those activities are found to comply with existing law.

This bill would, instead, make findings permitting the taking incidental to those activities.

(3) Existing law provides for a California's Colorado River Water Use Plan, and for a Quantification Settlement Agreement.

This bill would make a legislative finding and declaration that in order to resolve conflicts that have prevented the implementation of California's Colorado River Water Use Plan it is necessary to provide a mechanism to implement and allocate environmental mitigation responsibility between water agencies and the state for the implementation of the Quantification Settlement Agreement. The bill would permit the Department of Fish and Game to enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements, and would specify the costs to be paid by the agencies that are parties to the agreement. By authorizing the department to enter into the agreement, this bill would

make an appropriation by authorizing expenditures from the continuously appropriated Fish and Game Preservation Fund.

(4) This bill would become operative only if SB 277 and SB 317 are both chaptered and become effective on or before January 1, 2004.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12562 of the Water Code is amended to read:

12562. (a) (1) In furtherance of implementing and achieving the goals of the "California Plan," the sum of two hundred million dollars (\$200,000,000) in the account shall be used by the director to finance and arrange for lining portions of the All American Canal and the Coachella Branch of the All American Canal.

(2) The canal lining projects shall be completed not later than December 31, 2008, or such later date as may be required by extraordinary circumstances.

(3) The allocation of the water conserved from the canal lining projects and to be made available to the Metropolitan Water District of Southern California shall be consistent with federal law and shall be determined by an agreement among the Metropolitan Water District of Southern California, the Imperial Irrigation District, the Palo Verde Irrigation District, the Coachella Valley Water District, and the San Luis Rey settlement parties, reached after consultation with the director and the United States Secretary of the Interior.

(b) (1) The sum of thirty-five million dollars (\$35,000,000) from the account shall be used by the director to finance the installation of recharge, extraction, and distribution facilities for groundwater conjunctive use programs necessary to implement the "California Plan."

(2) Water stored in connection with the groundwater conjunctive use programs described in paragraph (1) shall be for the benefit of the member public agencies of the Metropolitan Water District of Southern California.

(3) Nothing in this subdivision limits the ability of the Metropolitan Water District of Southern California to enter into agreements regarding the sharing of any water made available under this subdivision.

(c) The Legislature finds that the extension of the date from December 31, 2006, to December 31, 2008, for completing the canal project linings under paragraph (2) of subdivision (a) during the 2003 portion of the 2003–04 Regular Session is required due to extraordinary circumstances. The Legislature finds that there have been unforeseen construction delays, contract award delays, and changed conditions

requiring design modifications for lining the All American Canal and the Coachella Branch of the All American Canal, and that these circumstances are extraordinary.

SEC. 2. Section 1 of Chapter 617 of the Statutes of 2002 is amended to read:

Section 1. (a) "Quantification Settlement Agreement" means the agreement, the provisions of which are substantially described in the draft Quantification Settlement Agreement (QSA), dated December 12, 2000, and submitted for public review by the Quantification Settlement Agreement parties, and as it may be amended, and that shall include as a necessary component the implementation of the Agreement for Transfer of Conserved Water by and between the Imperial Irrigation District and the San Diego County Water Authority, dated April 29, 1998 (IID/SDCWA Transfer Agreement), and as it may be amended, and any QSA-related program that delivers water at the intake of the Metropolitan Water District of Southern California's Colorado River Aqueduct.

(b) It is the intent of the Legislature to allocate fifty million dollars (\$50,000,000) from funds available pursuant to the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, if it is approved by the voters at the statewide general election to be held November 5, 2002 (Proposition 50), as a minimum state contribution or matching contribution for federal funds or funds obtained from other sources to prepare the restoration study, to assist in the implementation of the preferred alternative or other related restoration activities, including the program referred to in paragraph (3) of subdivision (d) of Section 2081.7 of the Fish and Game Code, at the Salton Sea or the lower Colorado River, or to assist in the development of a natural community conservation plan that is consistent with the initiative and that is implemented to effectuate the QSA.

(c) The Legislature finds that it is important to the state to meet its commitment to reduce its use of water from the Colorado River to 4.4 million acre-feet per year. The Legislature further finds that it is important that actions taken to reduce California's Colorado River water use are consistent with its commitment to restore the Salton Sea, which is an important resource for the state. The Legislature further finds that species previously designated as fully protected may be taken incidental to activities intended to meet the state's commitment to reduce its use of Colorado River water as long as those activities are found to comply with existing law, including Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(d) California's Colorado River Water Use Plan is a framework developed to allow California to meet its Colorado River needs from

within its basic annual apportionment. California will be required to reduce the amount of Colorado River water it uses by up to 800,000 acre-feet per year.

(e) California's basic apportionment of Colorado River water is 4.4 million acre-feet per year, but until recently, due to the availability of surplus river water and apportioned but unused water of Nevada and Arizona, California has used up to 5.2 million acre-feet per year over the past ten years. About 700,000 acre-feet of this additional water has been used to fill the Colorado River Aqueduct, which transports water to the southern California urban coast. Nevada and Arizona are now using, or are close to using, their full apportionments, and California can no longer rely on that surplus of water.

(f) The Salton Sea will eventually become too saline to support its fishery and fish-eating birds unless a restoration plan is adopted and implemented. The transfer of water from the Imperial Irrigation District to the San Diego County Water Authority and the other Quantification Settlement Agreement (QSA) parties pursuant to the QSA could result in an acceleration of the rate of salinization of the Salton Sea.

(g) Restoration of the Salton Sea is in the state and national interest. Congress recognized in the Salton Sea Reclamation Act of 1998, Public Law 105-372, that appropriate federal agencies should offer alternative restoration options to Congress and the public in order to avoid further deterioration of the internationally significant habitat and wildlife values of the Salton Sea and to protect the wide array of economic and social values that exist in the immediate vicinity of the Salton Sea. The failure to issue that report in a timely fashion has unnecessarily constrained the Legislature's ability to consider fully the costs and benefits of various options to restoration that should be undertaken at the Salton Sea.

SEC. 3. The Legislature hereby finds and declares that in order to resolve conflicts that have prevented the implementation of California's Colorado River Water Use Plan it is necessary to provide a mechanism to implement and allocate environmental mitigation responsibility between water agencies and the state for the implementation of the Quantification Settlement Agreement, as defined in subdivision (a) of Section 1 of Chapter 617 of the Statutes of 2002, as follows:

(a) Notwithstanding any other provision of law, the Department of Fish and Game may enter into a joint powers agreement for the purpose of providing for the payment of costs for environmental mitigation requirements. The Director of the Department of Fish and Game or his or her designee shall chair the authority created by the joint powers agreement. The joint powers agreement shall include the following agencies:

(1) Coachella Valley Water District.

- (2) Imperial Irrigation District.
- (3) San Diego County Water Authority.

(b) Costs for environmental mitigation requirements shall be allocated based on an agreement among Imperial Irrigation District, the Coachella Valley Water District, the San Diego County Water Authority and the Department of Fish and Game and shall include the following:

(1) Costs up to, and not to exceed, one hundred thirty-three million dollars (\$133,000,000) shall be paid by the Imperial Irrigation District, the Coachella Valley Water District, and the San Diego County Water Authority for environmental mitigation requirements. Those costs may be paid to a joint powers authority established pursuant to this section. The amount of the obligation established in this paragraph shall be adjusted for inflation.

(2) Thirty million dollars (\$30,000,000) shall be paid by the Imperial Irrigation District, Coachella Valley Water District, and the San Diego County Water Authority to the Salton Sea Restoration Fund as provided in paragraph (6) of subdivision (c) of Section 2081.7 of the Fish and Game Code. This amount shall be adjusted for inflation.

(c) Except for the requirements of subdivision (c) of Section 2081.7 of the Fish and Game Code, subdivision (f) of Section 1013 of the Water Code, and the provisions of subdivision (b), no further funding obligations or in-kind contributions of any kind for restoration of the Salton Sea shall be required of the Imperial Irrigation District, the Coachella Valley Water District, the Metropolitan Water District of Southern California, and the San Diego County Water Authority, including federal cost-sharing or other federal requirements. Any future state actions to restore the Salton Sea will be the sole responsibility of the State of California.

(d) As used in this section, "environmental mitigation requirements" means any measures required as a result of any environmental review process for activities which are part of the project described in the final Environmental Impact Report/Environmental Impact Statement for the Imperial Irrigation District Water Conservation and transfer project certified by the Imperial Irrigation District on June 28, 2002, as modified and supplemented by the addendum thereto prepared to assess subsequent revisions to the Quantification Settlement Agreement, but excluding measures required to address environmental impacts:

(1) Within the service areas of the Coachella Valley Water District, other than impacts related to the Salton Sea, the San Diego County Water Authority, and the Metropolitan Water District of Southern California.

(2) Associated with the All American Canal and the Coachella Canal Lining Projects, and measures to address socioeconomic impacts.

(e) As used in this section, “environmental review process” means any of the following:

(1) The conducting of any required environmental review or assessment, or both.

(2) The obtaining of any permit, authorization, opinion, assessment or agreement.

(3) The study or design of any required mitigation pursuant to the California Environmental Quality Act, the National Environmental Protection Act, the Endangered Species Act, the California Endangered Species Act, the California Water Code, the public trust doctrine, or any other federal or California environmental resource protection law, or applicable federal or California regulations regarding their implementation.

(f) As used in this section, “environmental review process” does not include the Lower Colorado River Multi-Species Conservation Program established by the States of California, Arizona, and Nevada, as it may address impacts to the Colorado River.

SEC. 4. This act shall become operative only if SB 277 and SB 317 of the 2003–04 Regular Session are both chaptered and become effective on or before January 1, 2004.

## **EXHIBIT B**

EXHIBIT B

ENVIRONMENTAL COST SHARING AGREEMENT



**ENVIRONMENTAL COST SHARING, FUNDING, AND  
HABITAT CONSERVATION PLAN DEVELOPMENT AGREEMENT**

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**ENVIRONMENTAL COST SHARING, FUNDING, AND  
HABITAT CONSERVATION PLAN DEVELOPMENT AGREEMENT**

This Environmental Cost Sharing, Funding, and Habitat Conservation Plan Development Agreement ("Agreement") is entered into as of October 10, 2003 ("Agreement Date"), by and among the COACHELLA VALLEY WATER DISTRICT, a California county water district ("CVWD"); the IMPERIAL IRRIGATION DISTRICT, a California irrigation district ("IID"); and the SAN DIEGO COUNTY WATER AUTHORITY, a California county water authority ("SDCWA") (CVWD, IID, and SDCWA are sometimes referred to individually in this Agreement as "Party" and collectively as the "Parties").

**RECITALS:**

A. IID, MWD and CVWD have entered into the Quantification Settlement Agreement dated as of October 10, 2003 (the "QSA").

B. IID and SDCWA have executed an Agreement for Transfer of Conserved Water dated April 29, 1998, and various amendments thereto (collectively, the "1998 IID/SDCWA Transfer Agreement") subject to environmental review and other conditions, which describes certain proposed activities involving the conservation of water by IID and the transfer of the conserved water to SDCWA.

C. IID and SDCWA have entered into an agreement dated January 27, 2000 to share certain costs related to the environmental review and compliance process and other state and federal approvals required to satisfy conditions necessary to implement the transactions described in the 1998 IID/SDCWA Transfer Agreement on the terms set forth therein (as the same may be amended from time to time, the "IID/SDCWA Cost Sharing Protocol").

D. The State of California has enacted the QSA Legislation as defined in the QSA.

E. The Parties and the State of California have executed the QSA-JPA as defined in the QSA, which provides, among other things, that Environmental Mitigation Costs for the IID water budget and certain IID transfers pursuant to the QSA and Related Agreements in excess of one hundred thirty-three million dollars (\$133,000,000) in Effective-Date Dollars shall be the exclusive responsibility of the State of California so as to ensure compliance with all federal and state environmental laws, including but not limited to the federal Endangered Species Act, federal Clean Air Act, and federal Clean Water Act.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises set forth herein, the Parties hereby agree as follows:

**ARTICLE 1  
DEFINITIONS**

**1.1. Incorporated Definitions.** The terms with initial capital letters that are used in this Agreement shall have the same meaning as set forth in Section 1.1 of the QSA, as of the Closing Date of the QSA, unless the context otherwise requires.

**1.2. Additional Definitions.** The following terms with initial capital letters shall have the meaning as set forth below.

(1) **Changed Circumstances.** Changes in circumstances affecting a species or the geographic area covered by the HCP that can reasonably be anticipated by the parties and that can reasonably be planned for in the HCP (e.g. a fire or other natural catastrophic event in areas prone to such event.) Changed Circumstances and the planned responses to those circumstances are described in the Draft HCP.

(2) **Class A Covered Species.** The species identified in Table 1.5-1 of the Draft HCP, but excluding the 25 species identified in Table 3.9-1 of the Draft HCP.

(3) **Class B Covered Species.** The species identified in Table 3.9-1 of the Draft HCP.

(4) **Costs.** All out of pocket costs reasonably incurred by a Party for a specified purpose pursuant to this Agreement, including, but not limited to, financing costs, costs of the Parties' staff, contractors, equipment, and real and personal property. The cost of real property shall be determined by its fair market value as defined in California Code of Civil Procedure §§ 1263.310 *et seq.*

(5) **Covered Activities.** Those activities described as Covered Activities in the Draft HCP.

(6) **Covered Species.** Class A Covered Species and Class B Covered Species.

(7) **Decision Date.** October 10, 2003.

(8) **Draft HCP.** The draft Habitat Conservation Plan dated June 2002 and included in the Final EIR/EIS for the IID Water Conservation and Transfer Project, as certified by the IID Board on June 28, 2002.

(9) **Environmental Litigation Costs.** All Costs reasonably incurred by any Party to defend any litigation involving transactions contemplated by the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement that challenges in whole or in part compliance with applicable environmental laws and regulations or any permit, appraisal, authorization, opinion, assessment or agreement pursuant to any other federal or any state resource protection law or applicable federal or state regulation implementing same.

(10) **Environmental Mitigation Costs.** All Costs reasonably incurred by any Party to satisfy the Environmental Mitigation Requirements. Reasonable attorneys' fees incurred for legal services related to the financing of environmental mitigation expenses shall be included as Mitigation Costs, but no other attorneys' fees incurred by any Party shall be included.

(11) **Environmental Mitigation Requirements.** Any measure required as a result of any Environmental Review Process for activities which are part of or in furtherance of the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement or the

Project described in the Final EIR/EIS for the IID Water Conservation and Transfer Project, certified by IID on June 28, 2002, as modified and supplemented by the Addendum thereto dated September 2003, but still including the Draft HCP, the HCP Mitigation Requirements, the transfer of up to 145 KAF in the aggregate as an Interim Surplus Backfill as referenced in the IID/DWR Transfer Agreement, and including the arrangement for ensuring adequate funding to pay for all required measures, but excluding activities and Costs incurred to address:

- (i) Environmental impacts within the CVWD, and SDCWA service areas other than impacts related to the Salton Sea within the CVWD service area;
- (ii) Environmental impacts associated with the All-American Canal and the Coachella Canal lining projects;
- (iii) Environmental impacts associated with the Lower Colorado River, other than impacts that are attributable to the transfer of Conserved Water from IID to SDCWA pursuant to the 1998 IID/SDCWA Transfer Agreement; and
- (iv) Any socioeconomic impacts.

(12) **Environmental Review Costs.** All Costs, including attorneys' fees, reasonably incurred by any Party in connection with any Environmental Review Process. Environmental Review Costs incurred prior to the Agreement Date shall be governed by Section 3.1 and shall not be included in Environmental Mitigation Costs.

(13) **Environmental Review Process.** Any process:

- (i) To conduct environmental review and/or assessment required under CEQA, NEPA and applicable federal, state and agency regulations implementing those statutes;
- (ii) To obtain any permit, approval, authorization, opinion, assessment or agreement pursuant to the Endangered Species Act ("ESA"), the California Endangered Species Act ("CESA"), the Natural Community Conservation Planning Act ("NCCPA"), the state and federal air quality laws, the California Water Code, the public trust doctrine, or any other federal or state environmental resource protection law or applicable federal or state regulations implementing same; and/or
- (iii) To study and/or design any mitigation required to comply with CEQA, NEPA, ESA, CESA, NCCPA, the state and federal air quality laws, the California Water Code, or any other federal or state resource protection law or applicable federal or state regulations implementing same;
- (iv) But not the Lower Colorado River Multi-Species Conservation Program among the States of California, Arizona and Nevada.

(14) **Expected Environmental Mitigation Costs.** The estimated present value costs of satisfying the Environmental Mitigation Requirements, which are stated and described in Exhibit A, attached hereto.

(15) **Expected HCP Mitigation Costs.** That portion of the Expected Environmental Mitigation Costs attributable to the HCP Mitigation Requirements, such Costs being described in Exhibit A.

(16) **HCP Mitigation Requirements.** All Environmental Mitigation Requirements described in Exhibit B attached hereto, and any modified or additional mitigation requirements that may be created pursuant to the HCP described in Section 5 herein. HCP Mitigation Requirements include, but are not limited to, actions to avoid, reduce, minimize, mitigate, or compensate for impacts on Covered Species and their habitat, and also actions to enhance the survival or recovery of the Covered Species.

(17) **Parties' Funds.** Funds required to be provided by the Parties to the QSA-JPA for Environmental Mitigation Requirements in the amounts set forth on Exhibit E.

(18) **Permits.** Collectively, incidental take permits issued by the U.S. Fish and Wildlife Service pursuant to 16 U.S.C. Section 1539(a)(1)(B) and by the California Department of Fish and Game pursuant to Fish and Game Code Sections 2081 and 2835.

(19) **Permit Effective Date.** The date the Permits take effect under applicable laws and regulations.

(20) **Remaining Environmental Mitigation Costs.** Environmental Mitigation Costs in excess of such Costs paid by the Parties' Funds.

(21) **Resource Approval Requirements.** The respective actions and responsibilities of the Parties, as lead agency or otherwise, undertaken in connection with the Resource Approvals contemplated by Section 6.2(2)(ii) of the QSA.

(22) **Review Requirements.** The Environmental Review and assessments undertaken by the respective Parties, as lead agency or otherwise.

(23) **State Obligation.** The amount, if any, of the Environmental Mitigation Costs required to be paid by the State of California pursuant to the QSA-JPA. The Parties understand the State Obligation to be an unconditional contractual obligation of the State of California not dependent on any further State action, and are relying on the State Obligation in order to comply with the extensive state and federal requirements that mandate Environmental Mitigation Requirements. In addition, the Parties are relying on the State Obligation in making contracts with third parties, including without limitation, landowners and farmers in the Imperial Valley who will be entering contracts to produce conserved water.

(24) **State Loan Guarantee.** A binding commitment by the California Infrastructure & Economic Development Bank to unconditionally guarantee the repayment in full of any outstanding debt incurred by the IID to fund capital improvements for the creation of Conserved Water provided for under the QSA and its Related Agreements, in an amount not to exceed One Hundred Fifty Million Dollars (\$150,000,000) in 2003 dollars, in the event that the QSA term ends prior to Year 45 of the QSA or, in lieu of an unconditional guarantee, a reasonable economic equivalent. Such guarantee shall be without any rights of recourse, subrogation, reimbursement, contribution or indemnity against the IID.

(25) **Unexpected Environmental Mitigation Costs.** Any Costs required for satisfaction of Environmental Mitigation Requirements that exceed Expected Environmental Mitigation Costs.

(26) **Unexpected HCP Mitigation Costs.** Any Costs required for satisfaction of HCP Mitigation Requirements that exceed Expected HCP Mitigation Costs.

(27) **Unforeseen Circumstances.** Changes in circumstances affecting a species or geographic area covered by the HCP that could not reasonably have been anticipated by IID at the time of the preparation of the Draft HCP.

(28) **Wildlife Agencies.** Collectively, the U.S. Fish and Wildlife Service ("USFWS") and the California Department of Fish and Game ("CDFG").

**1.3. Rules of Construction and Word Usage.** Unless the context clearly requires otherwise:

(1) The Recitals to this Agreement are a part of this Agreement to the same extent as the Articles;

(2) The Exhibits attached to this Agreement are incorporated by reference and are to be considered part of the terms of this Agreement;

(3) The plural and singular numbers include the other;

(4) The masculine, feminine, and neuter genders include the others;

(5) "Shall," "will," "must," and "agrees" are each mandatory;

(6) "May" is permissive;

(7) "May not" is prohibitory;

(8) "Or" is not exclusive;

(9) "Includes" and "including" are not limiting;

(10) "Between" includes the ends of the identified range; and

(11) "Person" includes any natural person or legal entity.

## **ARTICLE 2 ENVIRONMENTAL MITIGATION MANAGEMENT**

**2.1. Ongoing Review Requirements.** The Parties will cooperate and consult with one another with a view to assuring the timely and proper completion of all environmental reviews and assessments.



## **2.2. Ongoing Resource Approval Requirements.**

(1) **Primary Responsibility.** After the Agreement Date, each Party serving as a lead agency, co-lead agency, applicant, petitioner or otherwise in a position of authority and responsibility with respect to any resource approval shall obtain the prior consent of the other Parties (which consent may not be unreasonably withheld) before entering into a binding agreement with any person, including a Party, which contains terms and conditions pertaining to such approval requiring the incurrence of significant Environmental Mitigation Costs that will be funded or reimbursed pursuant to this Agreement.

(2) **Cooperation and Consultation.** The Parties will cooperate and consult with one another, as appropriate, with a view to assuring the timely acquisition of all resource approvals.

## **2.3. Mitigation Implementation Measures.**

(1) **Primary Responsibility.** Each Party serving as a lead agency, co-lead agency, applicant, petitioner or otherwise in a position of authority and responsibility with respect to the acquisition, construction or carrying out of Environmental Mitigation Requirements that will result in Environmental Mitigation Costs that will be funded or reimbursed pursuant to this Agreement shall exercise due care and prudence in the making of any decision and the performance of any activity relating to such measures.

(2) **Cooperation and Consultation.** The Parties will cooperate and consult with one another, as appropriate, with a view to assuring the timely and proper implementation of all Environmental Mitigation Requirements described in Section 2.3(1) at a reasonable cost consistent with the Parties' interests in minimizing their respective obligations under this Agreement and the public interest.

## **ARTICLE 3 ENVIRONMENTAL REVIEW AND LITIGATION COSTS**

**3.1. Environmental Review Costs.** Within thirty (30) days after the Agreement Date, CVWD shall pay IID Two Hundred Thousand Dollars (\$200,000). Except for the foregoing, and except as otherwise provided for in this Agreement or as a Party and one or more of the other Parties may otherwise agree under the IID/SDCWA Cost Sharing Protocol or under any other cost sharing protocol or similar written arrangement, each Party shall bear its own Environmental Review Costs incurred prior to or after the Effective Date.

**3.2. Environmental Litigation Costs.** It is contemplated that the Parties will join in the defense of any environmental litigation pertaining to the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement. Each Party shall bear its own Environmental Litigation Costs incurred in connection with any such defense, except as such Party may otherwise agree pursuant to a joint defense agreement between or among one or more of the other Parties pertaining to any such defense and specifying the respective responsibilities of the parties to such agreement, including any cost-sharing with respect thereto.

**3.3. Federal Agency Reimbursement Claims.** If BOR, the USFWS, or any other federal agency request the Parties to reimburse it for any of its costs in consulting, participating in, or conducting an environmental assessment, or any part thereof, with respect to the Review Requirements or Resource Approval Requirements, and if the Parties agree to the request, then the Parties will share and pay such requested reimbursement as follows: thirty-three percent (33%) by IID, thirty-three percent (33%) by CVWD, and thirty-three percent (33%) by SDCWA. Each Party shall pay its share of any such requested reimbursement directly to the requesting agency and shall notify the other Parties of the date and amount of such payment. This Section shall not apply to reimbursement requests arising out of: (i) environmental impacts within the CVWD (other than Pupfish Conservation Measures 1, 2, and 3 outlined in the December 18, 2002 Biological Opinion issued by the USFWS) and SDCWA service areas; (ii) environmental impacts associated with the All-American Canal and the Coachella Canal lining projects; (iii) environmental impacts associated with the Lower Colorado River; and (iv) any socioeconomic impacts.

**3.4. California Agency Reimbursement Claims.** If the CDFG, or any other California State agency, requests the Parties to reimburse it for any of its costs in consulting, participating in, or conducting an environmental assessment, or any part thereof, with respect to the Review Requirements, or Resource Approval Requirements, and if the Parties agree to the request, then the Parties will share and pay such requested reimbursement as follows: thirty-three percent (33%) by IID, thirty-three percent (33%) by CVWD, and thirty-three percent (33%) by SDCWA. Each Party shall pay its share of any such requested reimbursement directly to the requesting agency and shall notify the other Parties of the date and amount of such payment. This Section shall not apply to reimbursement requests arising out of: (i) environmental impacts within the CVWD (other than Pupfish Conservation Measures 1, 2, and 3 outlined in the December 18, 2002 Biological Opinion issued by the USFWS) and SDCWA service areas; (ii) environmental impacts associated with the All-American Canal and the Coachella Canal lining projects; (iii) environmental impacts associated with the Lower Colorado River; and (iv) any socioeconomic impacts.

## **ARTICLE 4 ENVIRONMENTAL MITIGATION COSTS**

### **4.1. Allocation of Environmental Mitigation Costs.**

(1) **In General.** Environmental Mitigation Costs shall be paid to the QSA-JPA from the Parties' Funds in the amounts set forth in Exhibit D and on the schedules attached as exhibits to the QSA-JPA.

(2) **IID Contribution.** IID's total payments of Environmental Mitigation Costs shall not exceed Thirty Million Dollars (\$30,000,000), as described in the 1998 IID/SDCWA Transfer Agreement, as amended as of the Closing Date of the QSA, and paid on the schedule attached to the QSA-JPA. IID shall also pay to the QSA-JPA the Settlement and Efficiency Opportunity Payment as required pursuant to the 1998 IID/SDCWA Transfer Agreement and IID/CVWD Acquisition Agreement on the schedule attached to the QSA-JPA.

(3) **Conditions Precedent.** As of the Closing Date, a binding commitment for the State Loan Guarantee in a form acceptable to the IID, and a binding commitment for the State Obligations in a form acceptable to the Parties shall have been obtained.

**4.2. Payment of Unexpected and Remaining Environmental Mitigation Costs.**

(1) **Unexpected Environmental Mitigation Costs.** Unexpected Environmental Mitigation Costs shall first be paid from any available Parties' Funds, and then from the State Obligation.

(2) **Remaining Environmental Mitigation Costs.** In the event that the State determines that the costs of Remaining Environmental Mitigation Costs during the term of the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement under this Section 4.2(2) would be reduced if modifications were made to IID's operations, then IID shall make such modifications, provided that, with respect to each such modification:

(i) IID has approved the modification, which approval shall not be unreasonably withheld;

(ii) The modification has been approved by the Wildlife Agencies and all governmental permits and approvals required to implement the modification have been obtained;

(iii) The modification is capable of reasonable implementation in compliance with all applicable laws;

(iv) The cost of such modification, including, but not limited to, the cost of processing any required governmental permits and approvals, the cost of processing any necessary environmental review, and the cost of implementing any mitigation measures required as a result of environmental review or any governmental permit or approval, shall be deemed included in Expected, Unexpected or Remaining Unexpected Mitigation Costs;

(v) The modification does not require any new fallowing, or the continuation of any existing fallowing, or any request for water deliveries, or the use of different crops, different acreage, a different amount of acreage or different farming methods, or the like; and

(vi) If the modification involves terminating or reducing the operation of a capital project, the affected owner/operator (IID or a farmer) can reasonably return to operations or farming as it existed prior to the installation of the capital project.

**4.3. Payment and Reimbursement of Environmental Mitigation Costs, as Incurred.**

(1) **In General.** Each Party will maintain proper accounting records detailing the Environmental Mitigation Costs paid by it to the QSA-JPA. Except as may otherwise be agreed by the Parties, indirect costs shall not be counted as incurred costs. For purposes of this Agreement, "indirect costs" include, but are not limited to, overhead costs, losses of revenue from any source and other opportunity costs of any kind.

(2) **Quantification of Incurred Costs.** Each Party will provide to the other Parties within 30 days after the end of each calendar quarter a detailed report setting forth the Environmental Mitigation Costs paid by it during such quarter. The form of such report will be as agreed from time to time by the Parties. Each such report will be subject to audit and verification by any Party, at that Party's expense.

(3) **Costs In the Event of Termination.** If the 1998 IID/SDCWA Transfer Agreement and/or the IID/CVWD Acquisition Agreement are terminated, the obligation of the Parties' Funds and of the State to pay for Environmental Mitigation Costs and Remaining Environmental Mitigation Costs attributable to the impacts caused by the Conserved Water transferred or acquired during the term of the 1998 IID/SDCWA Transfer Agreement and/or the IID/CVWD Acquisition Agreement shall continue as long as Environmental Mitigation is necessary to mitigate any continuing impacts that last beyond termination.

(4) In the event that the State determines that the costs of Remaining Environmental Mitigation Costs after termination of the 1998 IID/SDCWA Transfer Agreement and/or the IID/CVWD Acquisition Agreement under this Section 4.3(4) would be reduced if modification were made to IID's operations or to the operations of a farmer within IID's service area, then IID shall make such modifications, provided that, with respect to each such modification:

(i) IID has approved the modification, which approval shall not be unreasonably withheld;

(ii) The modification has been approved by Wildlife Agencies and all governmental permits and approvals required to implement the modification have been obtained;

(iii) The modification is capable of reasonable implementation in compliance with all applicable laws;

(iv) The cost of such modification, including, but not limited to, the cost of processing any required governmental permits and approvals, the cost of processing any necessary environmental review, and the cost of implementing any mitigation measures required as a result of environmental review or any governmental permit or approval, shall be deemed included in Remaining Mitigation Costs;

(v) The modification does not require any new fallowing, or the continuation of any existing fallowing, or any request for water deliveries, or the use of

different crops, different acreage, a different amount of acreage or different farming methods, or the like; and

(vi) If the modification involves terminating or reducing the operation of a capital project, the affected owner/operator (IID or a farmer) can reasonably return to operations or farming as it existed prior to the installation of the capital project.

In the event that the State determines that the costs referred to in the preceding paragraph could be reduced through modification of the operations of a farmer within the IID service area, the State shall notify IID of the estimated amount of such reduction in costs and shall request that IID request that the farmer take such action and/or modify operations so as to reduce said costs. IID shall thereupon determine whether the requested modification meets the requirements of subparagraphs (i) through (vi) of the preceding paragraph and if it does, shall request that the farmer undertake such modifications. If the farmer fails to undertake such modifications, the State shall not be obligated to pay any such costs to the extent that the requirement for such mitigation could be avoided or reduced by the requested changes.

## **ARTICLE 5 HABITAT CONSERVATION PLAN**

**5.1. Approval of HCP.** Commencing with the Agreement Date, SDCWA and CVWD, in consultation and collaboration with IID, shall use their best efforts to cause the USFWS and the CDFG to approve, prior to December 31, 2006, a habitat conservation plan/natural community conservation plan ("HCP") and related Permits which satisfy all of the standards and criteria described in Section 5.2. The obligation to utilize such best efforts shall continue except to the extent that coverage of a species is deemed infeasible pursuant to Section 5.4 below. "Best efforts" means the prudent, diligent and good-faith efforts of SDCWA and CVWD to secure the HCP and related Permits as a fiduciary for the benefit of IID, but shall not require the expenditure by SDCWA and CVWD together of more than Five Million Dollars (\$5,000,000) in 2002 dollars to fund third-party consultants tasked with developing the HCP. CVWD shall not be required to commit its staff and in-house resources in excess of two qualified employee equivalents.

**5.2. HCP Standards and Criteria.** The HCP and the Permits shall:

- (1) Comply with all applicable requirements of the ESA, CESA and Natural Community Conservation Planning Act;
- (2) Provide IID with the authority to implement the Covered Activities in compliance with ESA and CESA;
- (3) Provide IID with the authority to take the Covered Species incidental to the Covered Activities pursuant to ESA and CESA. Such take authority shall become effective no later than (i) the Permit Effective Date with regard to any Covered Species that is listed as an endangered species or threatened species under ESA as of the Permit Effective Date, (ii) the Permit Effective Date with regard to any Covered Species that is listed as a candidate species, threatened species or endangered species pursuant to CESA as of the Permit Effective Date, (iii) immediately upon the listing (and without further action or approval by USFWS) of any other

Covered Species as a threatened species or endangered species pursuant to ESA after the Permit Effective Date, and (iv) immediately upon the listing (and without any further approval action or approval by CDFG) of any Covered Species that is listed as a candidate species, threatened species or endangered species pursuant to CESA after the Permit Effective Date;

(4) Have a term of years not less than forty-five (45) years from the Permit Effective Date, except that coverage for the white pelican, black skimmer, and double-crested cormorant may be limited to a term of fifteen (15) years from the Permit Effective Date;

(5) Not impose on IID, or otherwise require IID to fund, support or implement, any Environmental Mitigation Requirements other than the HCP Mitigation Requirements described on Exhibit A. In no event shall IID be obligated to pay for any Costs of complying with or implementing the HCP or complying with the Permits, in excess of Section 4.1(2) or other limitation on IID's obligation to pay for mitigation costs.

(6) Include an Implementation Agreement among IID and the Wildlife Agencies that describes the rights and obligations of IID and the Wildlife Agencies with regard to the implementation of the HCP. The Implementation Agreement shall, at a minimum, include the following covenants in a form that is valid, binding and enforceable by IID:

(i) In the event of Unforeseen Circumstances, USFWS and CDFG will not require from IID the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources with regard to the impacts of the Covered Activities on the Covered Species;

(ii) Except for the HCP Mitigation Requirements described on Exhibit A, no limitations or restrictions shall be imposed on IID, either directly or indirectly, by USFWS or CDFG with regard to the impacts of the Covered Activities on the Covered Species or with regard to the impacts on the Covered Species attributable to Changed Circumstances;

(iii) USFWS shall agree that the Section 10(a) Permit shall constitute a Special Purpose Permit under 50 CFR section 21.27, for the take of all Covered Species identified at 50 CFR section 10.13, excluding bald eagles which are listed under ESA as of the Effective Date. The Special Purpose Permit shall be valid for a period of three (3) years from its Effective Date, provided the Section 10(a) Permit remains in effect for such period. The Special Purpose Permit shall be renewed, provided the IID remains in compliance with the terms of the Implementation Agreement and the Section 10(a) Permit. Each such renewal shall be valid for a period of three years, provided that the Section 10(a) Permit remains in effect for such period. USFWS will not refer the incidental take of any bald eagle, *Haliaeetus leucocephalus*, for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712), or the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. §§ 668-668d), if such take is in compliance with the Mitigation Requirements;

(iv) In any consultation that may be required or processed pursuant to Section 7 of ESA (16 U.S.C. section 1536(a) with regard to the Covered Activities

analyzed in the ESA intra-Service Section 7 consultation for the HCP, the USFWS shall, to the maximum extent appropriate and permitted by law, rely upon, and utilize, the ESA biological opinion completed with regard to analysis of the HCP and, if appropriate, programmatic Section 7 opinions governing Covered Species;

(v) In the event that a critical habitat determination is made for any Covered Species, no additional Mitigation shall be required of IID that is in addition to the Mitigation Requirements; and.

(vi) Neither USFWS or CDFG shall suspend or revoke any of the Permits without first conducting a formal adjudicatory hearing substantially in accordance with the procedures applicable to hearings conducted pursuant to Sections 554-556 of the federal Administrative Procedure Act to the extent permitted by applicable law.

(7) Be authorized by complete and final environmental documentation pursuant to CEQA and NEPA.

**5.3. Exceptions.** Notwithstanding the provisions of Sections 5.1 and 5.2, above, SDCWA and CVWD shall not be required to provide coverage under the HCP for certain Covered Species if such coverage is deemed infeasible. Coverage shall be deemed infeasible under the following circumstances:

(1) As to Class B Covered Species, if, as of June 1, 2005, despite the best efforts of SDCWA and CVWD (i) the Wildlife Agencies determine (by final agency action) that coverage of a species or the provisions of coverage of a species is prohibited by ESA or CESA, or (ii) SDCWA and CVWD reasonably determine that the Cost of such coverage or the provisions of such coverage, when combined with all other Expected HCP Mitigation Costs (as adjusted to reflect any then-identifiable actual Costs or updated estimates), will exceed the Expected HCP Mitigation Costs;

(2) As to Class A Covered Species, SDCWA and CVWD shall have utilized their continuous best efforts until December 31, 2005, to obtain coverage for such species, but (i) the Wildlife Agencies have determined (by final agency action) as of December 31, 2006, that coverage of a species or the provisions of coverage of a species is prohibited by ESA or CESA, or (ii) SDCWA and CVWD reasonably determine that the Cost of such coverage or the provisions of such coverage, when combined with all other Expected HCP Mitigation Costs (as adjusted to reflect any then-identifiable actual Costs or updated estimates), will exceed the total amount of Expected HCP Mitigation Costs described in Exhibit A. In the event that IID is relieved of all obligations under applicable law and regulation to undertake some portion of the HCP Mitigation Requirements described in Exhibit B, the amount of Expected HCP Mitigation Costs for purposes of this Section 5.3 shall be adjusted to reflect any change in said requirements.

**5.4. Revival of Efforts.** In the event that coverage of a Class A or Class B Covered Species is deemed infeasible as of December 31, 2006, and June 1, 2005, respectively, pursuant to subsection 5.3(i) and (ii) above, and if new information becomes available which indicates

that approval of coverage of that species by the Wildlife Agencies is feasible and within the budget of Expected HCP Mitigation Costs (as adjusted to reflect any then-identifiable actual Costs or updated estimates), SDCWA and CVWD shall revive their best efforts to obtain coverage for that species.

**5.5. Modifications to IID Operations.** In the event that SDCWA and CVWD determine that the cost of satisfying the requirements of subsections 5.1 and 5.2, above, would be reduced if modifications were made to IID's operations, then IID shall make such modifications, provided that, with respect to each such modification:

- (i) IID has approved the modification, which approval shall not be unreasonably withheld;
- (ii) The modification has been approved by USFWS and CDFG and all governmental permits and approvals required to implement the modification have been obtained;
- (iii) The modification is capable of reasonable implementation in compliance with all applicable laws;
- (iv) The cost of such modification, including, but not limited to, the cost of processing any required governmental permits and approvals, the cost of processing any necessary environmental review, and the cost of implementing any mitigation measures required as a result of environmental review or any governmental permit or approval, shall be deemed included in Expected HCP Mitigation Costs;
- (v) The modification does not require a change in operations by any individual farmer(s);
- (vi) The modification does not require any new fallowing, or the continuation of any existing fallowing, or any request for water deliveries, or the use of different crops, different acreage, a different amount of acreage or different farming methods, or the like; and
- (vii) If the modification involves terminating or reducing the operation of a capital project, then the affected owner/operator (IID or a farmer) has reasonably determined that the termination/reduction will not adversely affect its operations or farming, compared to conditions prior to the termination/reduction of operations.

**5.6. Breach of Agreement.** Any failure of the IID, SDCWA or CVWD to satisfy its respective obligations described in this Article 5 shall constitute a material breach of this Agreement. The Parties shall utilize the procedures of Sections 7.1 and 7.3 to resolve any dispute regarding the existence of a material breach under this Section.

**5.7. Compliance with Laws.** IID shall have the right, at any time during the term of the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement, to cease any activity if IID, acting in good faith and after receiving a written notification or warning, determines that continuation of such activity will: (i) violate ESA, CESA, any regulations or



orders promulgated pursuant thereto, the terms and conditions of any ESA or CESA permit, approval or agreement; or (ii) otherwise violate applicable state, federal or local laws, ordinances or regulations, unless IID is immune from such liability pursuant to statute. Prior to making such determination, if circumstances permit, IID shall consult with the other Parties to this Agreement and with the Wildlife Agencies, and other agency with the authority to enforce the statute, regulation, permit, order or approval that is the subject of the proposed IID determination. IID shall not cease the activity if the agency with jurisdiction to enforce the applicable statute, regulation, permit, order or approval, provides IID with adequate assurances, in writing, that the continuation of the activity will not violate the applicable statute, regulation, permit, order or approval. IID must utilize a substitute activity for the ceased activity, if such substitute is environmentally, physically and economically available. Any additional costs for the substitute activity shall be treated as an Unexpected HCP Mitigation Cost.

## **ARTICLE 6 CONTRACT ADMINISTRATION**

### **6.1. Contract Managers.**

(1) **Designation of Contract Managers.** In order to facilitate and implement this Agreement, the contract manager designated by each Party herein shall be responsible for managing and implementing that Party's performance hereunder. Any Party may change its designated contract manager at any time by prior written notice to the other Parties. The initial contract managers are:

For CVWD: Steve Robbins

For IID: Tina A. Shields

For SDCWA: Larry Purcell

(2) **Communications.** All correspondence, notices or other matters related to this Agreement, including payments, shall be directed to the appropriate contract manager designated above.

(3) **Administrative Protocols.** The contract managers will develop and amend from time to time written administrative protocols, subject in each case to the approval of the Parties or their delegates.

## **ARTICLE 7 DISPUTES**

**7.1. Disputes Among or Between the Parties.** The Parties or their delegates shall seek to resolve any dispute concerning the interpretation or implementation of this Agreement through negotiation involving, as and when appropriate, the general manager or chief executive officer of each of the Parties. Any unresolved dispute among or between CVWD, IID and/or SDCWA under Articles 4 and 5 of this Agreement shall be resolved pursuant to Section 7.3. Any other unresolved dispute among or between Parties under this Agreement shall be resolved

by litigation pursuant to Section 7.2. The Parties consent to suit in Federal court to enforce the terms of this Agreement.

**7.2. Action or Proceeding Between the Parties.** Each Party acknowledges that it is a "local agency" within the meaning of § 394(c) of the California Code of Civil Procedure ("CCP"). Each Party further acknowledges that any action or proceeding commenced by one Party against the other would, under § 394(a) of the CCP, as a matter of law be subject to being transferred to a "Neutral County," or instead, having a disinterested judge from a Neutral County assigned by the Chairman of the Judicial Council to hear the action or proceeding. Each party therefore:

(1) Stipulates to the action or proceeding being transferred to a Neutral County or to having a disinterested judge from a Neutral County assigned to hear the action or proceeding;

(2) Waives the usual notice required under the law-and-motion provisions of Rule 317 of the California Rules of Court;

(3) Consents to having any motion under § 394(c) heard with notice as an ex parte matter under Rule 379 of the California Rules of Court; and

(4) Acknowledges that this Agreement, and in particular this section, may be submitted to the court as part of the moving papers.

Nothing in this section, however, impairs or limits the ability of a Party to contest the suitability of any particular county to serve as a Neutral County.

**7.3. Resolution of Arbitration Disputes.** Disputes among or between Parties under Articles 4 and 5 of this Agreement shall be resolved pursuant to the provisions of this Article.

(1) Any dispute which cannot be resolved by consensual agreement shall be resolved through binding arbitration by a panel of arbitrators in an arbitration proceeding conducted in a Neutral County, or such other location as the Parties may agree. Arbitration proceedings may be initiated by any Party sending a demand for arbitration to the other Parties in conformance with the Notice provisions of this Agreement. The Parties shall impanel a group of three (3) arbitrators by each selecting an arbitrator of its choice who shall then select the third (3rd) member of the panel. At least one of the arbitrators must be a person who has actively engaged in the practice of law with expertise deciding disputes and interpreting contracts. Prior to the commencement of proceedings, the appointed arbitrators will take an oath of impartiality. The Parties shall use their reasonable best efforts to have the arbitration proceeding concluded within ninety (90) Business Days.

(2) In rendering their determination, the arbitrators shall determine the rights and obligations of the Parties according to the substantive and procedural laws of California. All discovery shall be governed by the CCP with all applicable time periods for notice and scheduling provided therein being reduced by one-half (½). The arbitrators may establish other discovery limitations or rules. The arbitration process will otherwise be governed by the Commercial Arbitration Rules of the American Arbitration Association. All issues regarding

compliance with discovery requests shall be decided by the arbitrators. A decision by two (2) of three (3) arbitrators will be deemed the arbitration decision. The arbitration decision shall be in writing and shall specify the factual and legal bases for the decision. The decision of such arbitrators shall be final and binding upon the parties, and judgment upon the decision rendered by the arbitration may be entered in the Neutral County superior court.

(3) The costs (including, but not limited to, reasonable fees and expenses of counsel and expert or consultant fees and costs), incurred in an arbitration (including the costs to enforce or preserve the decision) shall be borne by the Party(ies) against whom the decision is rendered. If the decision is not clearly against one Party on one or more issues, each Party shall bear its own costs. The arbitration decision shall identify whether any Party shall be responsible for the costs of the other Party(ies).

## **ARTICLE 8 GENERAL PROVISIONS**

**8.1. Term.** This Agreement shall commence as of the Closing Date and shall terminate on the Termination Date, except that the requirements of Section 4.3(5) shall survive the Termination Date.

**8.2. Amendment.** This Agreement may be amended only by a written instrument signed by the IID, SDCWA and CVWD.

**8.3. Attorneys' Fees.** If any Party commences a legal proceeding for any relief against any other Party to this Agreement arising out of this Agreement, the losing Party shall pay the prevailing Party's legal costs and expenses, including, but not limited to, reasonable attorneys' fees and court costs, except as may otherwise be specified in the decision or order entered in said proceeding.

**8.4. Authority.** Each Party represents and warrants that: (i) it has the requisite power and authority to enter into and perform its obligations under this Agreement; (ii) the individuals executing this Agreement on its behalf are the duly authorized agents of such Party and are authorized to do so under the Party's governing documents; and (iii) the terms of this Agreement are binding upon and enforceable against such Party in accordance with its terms.

**8.5. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of which, taken together, shall constitute one and the same Agreement after each party has signed such a counterpart.

8.6. **Effective Date.** This Agreement shall be effective on the Effective Date of the QSA.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Date first written above.

"CVWD"

COACHELLA VALLEY WATER DISTRICT

By: \_\_\_\_\_  
Title: \_\_\_\_\_

"IID"

IMPERIAL IRRIGATION DISTRICT

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

"SDCWA"

SAN DIEGO COUNTY WATER AUTHORITY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### General Notes

1. Except as noted, all costs are in year 2002 dollars. Future costs have been discounted 3% for present value estimates.
2. Costs for each measure include 3 phases: 1) design/permitting, 2) implementation/construction, and 3) operations & maintenance for the 45 year project period.
3. Costs for each measure are dependent on the specific timing and duration for each phase. Phases were initiated when necessary to provide offsets for expected impacts.
4. Stabilization of the receding Salton Sea shoreline utilizes gravel cover. Costs for alternative measures could vary substantially.
5. No costs are included for any unknown future mitigation measures that might arise from required studies.
6. No specific sites for habitat creation measures have been identified. Costs are planning estimates only and may change depending upon location, local economic conditions, final design, etc.
7. No additional commitment of land, water or other resources is required for adaptive management.
8. Attempts have been made to eliminate duplication of costs among measures.
9. Supporting documentation for each cost estimate is available at CVWD, IID, MWD, and SDCWA.

## Estimated HCP Costs

Condition No.	Mitigation Measure	Present Value in Thousands (\$2002) - Yr 45	Notes and explanation of zero-cost items.
General - 1	Hire full-time biologist to manage HCP and participate on HCP Implementation Team.	3,678	First year O&M \$150,000. Begins in 2003.
General - 2	Convene and facilitate HCP IT.	270	Reimbursement for CDFG and USFWS participation on HCP IT. IID biologist participation addressed in General-1. Begins in 2003.
Salton Sea - 2	Pupfish refugium pond.	340	Pond creation to be implemented at end of 15 Year Minimization Plan.
Salton Sea - 3	Tamarisk scrub habitat surveys and creation.	11,132	Surveys and habitat replacement to begin at end of 15 Year Minimization Plan. Maximum creation assumes 1321 acres.
Tree Habitat - 1	Tree habitat surveys and creation.	751	Surveys and habitat replacement to begin at start of efficiency conservation in 2008. Irrigation water to establish tree habitat (5 years) is included at 5AF/acre/year. Irrigation water assumed at \$16/AF. Maximum creation assumes 34.1 acres.

Tree Habitat - 2	Seepage community surveys and creation.	644	Surveys and habitat replacement to begin at start of efficiency conservation in 2008. Irrigation water to establish tree habitat (5 years) is included at 5AF/acre/year. Irrigation water assumed at \$16/AF. Maximum creation assumes 30 acres.
Tree Habitat - 3	Site surveys for construction scheduling.	7	Surveys to begin at start of efficiency conservation in 2008.
Drain Habitat - 1	Creation of managed marsh habitat.	23,682	73 acres to be implemented in 2003, 117 acres to be implemented at start of efficiency conservation period in 2008, plus the balance of 462 acres to be constructed starting in 2017. The maximum total acreage is 652. Water to sustain marsh is included at 12AF/acre/year with 50% from existing drainage and 50% from purchased irrigation water. Irrigation water assumed at \$16/AF. Redundant with SWRCB order.
Drain Habitat - 2	Avoid dredging river deltas between Feb.15 and Aug. 31.	0	No additional costs assumed for scheduling of maintenance dredging.
Drain Habitat - 3	Site surveys to avoid construction disturbance of covered species.	0	No additional costs assumed for crews to survey areas for wildlife prior to beginning work.
Desert Habitat - 1	Worker education program - training and materials.	37	Begins in 2003.

Desert Habitat - 2	Precautions for workers during O&M of canals and drains.	38	Begins in 2003.
Desert Habitat - 3	Habitat surveys, construction monitoring, and vegetation restoration.	436	Begins in 2003.
Desert Habitat - 4	Habitat surveys and update worker manual.	476	Habitat surveys and worker training manual to begin in 2003.
Desert Habitat - 5	Desert habitat acquisition and management.	118	Habitat acquisition and management to begin at start of efficiency conservation in 2008. Maximum acquisition assumes 100 acres.
Owl - 1	Worker education program for canal and drain maintenance.	60	Begins in 2003. Some possible redundancy with Desert Habitat-1.
Owl - 2	Visual inspection of banks. Mark burrows. Develop standard operating procedures.	920	Operating procedures develop in 2006. Habitat protection measures begin at start of efficiency conservation period in 2008.
Owl - 3	Precautions for grading of spoils near canals and ditches.	0	No additional cost assumed for taking precautions during grading of spoils.
Owl -4	Avoid disturbing burrows. Fill burrows to maintain channel.	2,014	Habitat measures to begin at start of efficiency conservation period in 2008.
Owl - 5	Manage location and schedule of facility construction.	60	Habitat measures to begin at start of efficiency conservation period in 2008.
Owl - 6	Maintain current techniques for canal and drain maintenance.	0	No additional cost assumed to maintain current techniques.
Owl - 7	Owl abundance, distribution, and demographic surveys.	532	Begins in 2003.



Owl - 8	Avoid disturbing burrows. Replace impacted burrows at 2:1 ratio.	344	Habitat replacement to begin at start of efficiency conservation period in 2008.
Owl - 9	Farmer and public education program.	43	Begins in 2003.
Pupfish - 1	Maintain current levels of pupfish habitat.	862	Habitat maintenance to begin at start of efficiency conservation period in 2008. Redundant with SWRCB order.
Pupfish - 2	Minimize selenium impacts on pupfish.	4,383	Drain channel management to begin at start of efficiency conservation in 2008. Redundant with SWRCB order.
Pupfish - 3	Modifications to increase amount of pupfish drain habitat.	3,658	Habitat creation to begin at start of efficiency conservation period in 2008. Redundant with SWRCB order.
Pupfish - 4	Protocol for surveys to monitor pupfish presence.	863	Protocol developed by start of efficiency conservation period in 2008.
Pupfish - 5	Evaluate effect of drain maintenance on pupfish.	45	Study begins at start of efficiency conservation period in 2008.
Pupfish - 6	Gradual dewatering and salvage of stranded pupfish.	3,469	Fish salvage begins at start of efficiency conservation period in 2008. Redundant with SWRCB order.
Razorback Suckers - 1	Salvage fish and return to Colorado River.	40	Fish salvage begins at start of efficiency conservation period in 2008. Redundant with SWRCB order.

Agriculture - 1	Install markers on tailwater pump power lines.	40	Marker installation begins at start of efficiency conservation period in 2008.
Agriculture - 2	Plant and maintain cover crops or ridge till lands to conserve water.	360	Begins in 2003.
Other Species - 1	Implement species surveys and submit study program.	738	Begins in 2003.
Other Species - 2	Implement impact avoidance and minimization measures.	817	Begins in 2004.
Monitoring and Adaptive Management	Monitoring and adaptive management described in Chapter 4 of draft HCP.	0	Costs included in individual measures listed above are assumed to cover adaptive management.
<b>TOTAL HCP</b>		<b>60,857</b>	

## Estimated 2002 Biological Opinion Portion of HCP Costs

Condition No.	Mitigation Measure	Present Value in Thousands (\$2002) - Yr 45	Notes and explanation of zero-cost items
15 Year Minimization Plan	Acquire and discharge water to the Salton Sea.	50,000	Water to avoid material change in Salton Sea elevation and salinity for 15 years. Redundant with SWRCB order.
Pupfish CM 2	Pupfish selenium toxicity study. Pupfish and selenium monitoring. Develop mitigation. Study of sources and management of selenium.	939	Begins in 2003. Includes selenium studies required by SWRCB.
Willow Flycatcher CM 1	Willow flycatcher breeding habitat evaluation.	228	Habitat surveys to begin at start of efficiency conservation period in 2008.
Willow Flycatcher CM 2	Habitat monitoring and replacement.	733	Habitat monitoring and replacement to begin at end of 15 Year Minimization Plan. Possible partial redundancy with Tree Habitat 1 & 2.
Willow Flycatcher CM 3	Long-term monitoring plan.	24	Management plan developed at end of 15 Year Minimization Plan. Possible partial redundancy with Tree Habitat 1 & 2.
Willow Flycatcher CM 4	Willow flycatcher take evaluation.	0	Addressed by Willow Flycatcher CM 1.
Brown Pelican CM 2	Roost site creation and monitoring.	1,175	No Year 1 capital cost; habitat creation to be implemented in 2009.
<b>TOTAL 2002 BO</b>		<b>53,099</b>	

## Estimated CEQA Costs

Condition No	Mitigation Measure	Present Value In Thousands (\$2002) - Yr 45	Notes and explanation of zero-cost items
<b>Water Quality</b>			
WQ-2	Selenium will exceed ambient water quality criteria.	0	Mitigation determined infeasible. Significant and unavoidable impact.
WQ-4	Selenium will exceed ambient water quality criteria.	0	Mitigation determined infeasible. Significant and unavoidable impact.
WQ-5	Selenium will exceed ambient water quality criteria.	0	Mitigation determined infeasible. Significant and unavoidable impact.
WQ-7	Selenium will exceed ambient water quality criteria.	0	Mitigation determined infeasible. Significant and unavoidable impact.
QSA-WR-1	Selenium will exceed ambient water quality criteria.	0	Mitigation determined infeasible. Significant and unavoidable impact.
	<b>Water Quality Subtotal</b>	<b>0</b>	

<b>Agricultural Resources</b>			
AR-1	Prohibit use of non-rotational fallowing. Otherwise, no mitigation measures.	0	No costs for prohibiting use of non-rotational fallowing.
QSA-AR-1	Non-fallowing conservation measures or short term fallowing.	0	Addressed by measure AR-1.
SWRCB-HCP-AR-2	Conversion of up to 700 acres of prime farmland to create habitat.	0	Mitigation determined infeasible. Significant and unavoidable impact.
SWRCB-AR-1	Reclassify up to 50,000 acres of prime farmland or farmland of statewide importance.	0	Addressed by AR-1.
	<b>Agricultural Resources Subtotal</b>	<b>0</b>	
<b>Recreation</b>			
R-7	Temporary and permanent relocation of boat launch facilities.	1,600	Salton Sea water level adjustment measures assumed to begin at end of 15 Year Minimization Plan. 8 boat launch facilities relocated every 3 years through 2040 as necessary.
R-10	Temporary and permanent relocation of camping facilities.	2,889	Salton Sea water level adjustment measures assumed to begin at end of 15 Year Minimization Plan. 88 campsites relocated every 6 years through 2040 as necessary.
QSA-RR-3	Relocation of Salton Sea recreation facilities or use of Conserved Water.	0	Addressed by measures R-7 and R-10.
SWRCB-R-7	Temporary and permanent relocation of boat launching facilities.	0	Addressed by R-7.
SWRCB-R-8	Reduced sportfishing opportunities.	0	Addressed by 15 Year Minimization Plan.

SWRCB-R-9	Implement SSHCS to avoid salinity impacts.	0	Addressed by 15 Year Minimization Plan and Salton Sea 2.
SWRCB-R-10	Temporary and permanent relocation of campgrounds and ancillary facilities.	0	Addressed by R-10.
	<b>Recreation Subtotal</b>	<b>4,489</b>	

Air Quality			
AQ-2	Minimize PM10 emissions during construction and operation of efficiency conservation measures.	1,650	Begins in 2008. Redundant with SWRCB order.
AQ-3	Minimize PM10 emissions during fallowing through conservation measures, soil stabilization, etc.	14,895	Cost includes first year fallowing of 2,500 acres. Begins in 2003.
AQ-4	General conformity determination.	12	Begins in 2008.
AQ-7	Access restriction, research, monitoring. Obtain emission offsets and [or] direct emission reductions at the Sea.	36,774	Monitoring and research begins in 2008. Salton Sea water level adjustment measures assumed to begin three years after end of 15 Year Minimization Plan, and be implemented continuously for 20 years.
EJ-2	Access restriction, research, monitoring, and ERCs.	0	Addressed by AQ-7.
EJ-3	Access restriction, research, monitoring, and ERCs.	0	Addressed by AQ-7.
QSA-AQ-1	Construction SOPs and agricultural BMPs for dust control.	0	SOPs addressed in unit construction costs and dust control measures addressed under AQ-2 and AQ-3.
QSA-AQ-2	Construction BMPs for NOx, fugitive dust.	0	BMPs included in unit construction costs and dust control measures addressed under AQ-2 and AQ-3.
QSA-AQ-3	Fugitive dust from decline in Salton Sea levels.	0	Addressed by AQ-7.
SWRCB-AQ-3	Dust control measures.	0	Addressed by AQ-3.

SWRCB-AQ-7	Access restriction, research, monitoring. Obtain emission offsets and direct emission reductions at the Sea.	0	Addressed by AQ-7.
	<b>Air Quality Subtotal</b>	<b>53,331</b>	
<b>Cultural Resources</b>			
CR-1	Cultural resource surveys prior to construction of water conservation measures.	31	Surveys to begin in 2003. Assumes preconstruction surveys for 100 sites over a 15 year period with 5 sites requiring testing and recovery.
CR-2	Protect cultural resources during construction and operation.	0	Addressed by CR-1.
CR-5	Protect cultural resources during reduced flow to Salton Sea. Conduct archaeological surveys.	87	Salton Sea water level adjustment measures assumed to begin three years after end of 15 Year Minimization Plan.
ITA-1	Control of public access on exposed tribal lands.	0	Addressed by CR-5.
QSA-CR-3	Cutural Resource Surveys.	0	Addressed by CR-5.
	<b>Cultural Resources Subtotal</b>	<b>118</b>	



Noise			
N-1	Permanent or temporary sound barriers for construction noise sources.	13	Barriers constructed at start of efficiency conservation period in 2008.
N-2	Permanent sound barriers for pumps in noise-sensitive areas.	15	Barriers constructed at start of efficiency conservation period in 2008.
N-3	Permanent sound barriers for interceptor pumps in noise-sensitive areas.	3	Barriers constructed at start of efficiency conservation period in 2008.
N-4	Permanent or temporary sound barriers for noisy equipment.	0	Addressed by N-1 through N-3.
QSA-N-1	Construction BMPs, sound barriers.	0	Addressed by N-1.
	<b>Noise Subtotal</b>	<b>31</b>	

<b>Geologic Resources</b>			
QSA-GSM-1	Minimize soil erosion through watering, paving, limiting vehicle speeds, crusting agents, and construction monitoring.	1,999	Includes storm water planning and related BMPs. PM10 dust control elements addressed by AQ-2.
QSA-GSM-3	Construction BMPs for soil erosion. Monitor water levels for risk of liquefaction.	0	BMPs included in unit construction costs and dust control measures addressed under AQ-2, AQ-3 and QSA-GSM-1.
<b>Geologic Resources Subtotal</b>		<b>1,999</b>	
<b>Hazards</b>			
QSA-HHM-1	Assess impacts on local emergency response plans. Complete Phase I studies for potential contamination.	268	Assessment to be implemented at start of efficiency conservation period in 2008. Assumes 10 sites require assessment and 5 sites require a Phase 1 audit.
<b>Hazards Subtotal</b>		<b>268</b>	
<b>Aesthetics</b>			
A-1	Relocate recreation facilities and develop interpretive facilities and materials.	0	Costs addressed in measures R-7 and R-10.
SWRCB-A-1	Aesthetic impacts from drop in Salton Sea level.	0	Addressed by 15 Year Minimization Plan and A-1.
<b>Aesthetics Subtotal</b>		<b>0</b>	
<b>TOTAL CEQA</b>		<b>60,236</b>	

## Estimated CESA 2081 Costs

Condition No.	Mitigation Measure	Present Value In Thousands (\$2003) - Yr 45	Notes and explanation of zero-cost items.
Backwater/Marsh	Create and maintain 16.25 acres of marsh and backwater habitat	1,268	Begins 2003, to be completed within 5 years
<b>TOTAL CESA 2081</b>		<b>1,268</b>	

Note: CESA LCR 2081 cost estimate is for mitigation acreage and actions that are in addition to those required in the 2001 Lower Colorado River BO, and assumes that BO measures will be acceptable as satisfaction of comparable 2081 requirements.

## Estimated 2001 Lower Colorado River BO Costs

Condition No.	Mitigation Measure	Present Value in Thousands (\$2001) - Yr 45	Notes and explanation of zero-cost Items
Conservation Measure 1	Stock 10,000 sub-adult razorback suckers into the Colorado River	*	Included in funding agreement
Conservation Measure 2	Create, restore, and maintain 38.25 acres of marsh and backwater habitat	*	Included in funding agreement
Conservation Measure 3	Fund the capture of wild-born or F1 generation bonytails	*	Included in funding agreement
Conservation Measure 4	Restore and maintain 186 acres of southwestern willow flycatcher habitat along the LCR between Parker and Imperial Dams	*	Included in funding agreement
<b>TOTAL 2001 BO</b>		<b>3,000</b>	

\* Mitigation Measures shall be accomplished through an agreement with the U.S. Bureau of Reclamation, under which Reclamation shall undertake all required measures in the 2001 LCR BO attributable to the transfer of 200,000 AFY in return for payment of \$3 million in 2001 dollars.

## **EXHIBIT B**

### **HCP Mitigation Requirements**

The HCP Mitigation Requirements include the following measures and requirements, all as described in greater detail in the June 2002 Draft HCP and the December 18, 2002 Biological Opinion issued by the U.S. Fish and Wildlife Service, as applicable:

#### June 2002 Draft HCP:

General – 1

General – 2

Salton Sea – 2

Salton Sea – 3, except that the survey of the areas designated as shoreline strand and adjacent wetland shall commence in 2018.

Tree Habitat – 1; Tree Habitat – 2; Tree Habitat – 3

Drain Habitat – 1; Drain Habitat – 2; Drain Habitat – 3

Desert Habitat – 1; Desert Habitat – 2; Desert Habitat – 3; Desert Habitat – 4; Desert Habitat – 5

Owl – 1; Owl – 2; Owl – 3; Owl – 4; Owl – 5; Owl – 6; Owl – 7; Owl-8; Owl-9

Pupfish -1; Pupfish -2; Pupfish – 3; Pupfish – 4; Pupfish – 5; Pupfish –6;

Razorback Suckers – 1

Agriculture – 1; Agriculture – 2

Other Species – 1

Other Species – 2

The monitoring and adaptive management requirements described in Chapter 4 of the Draft HCP.

#### 2002 Biological Opinion

The 15-Year Minimization Plan described on page 17-18 of the December 18, 2002 Biological Opinion issued by the U.S. Fish and Wildlife Service

Pupfish Conservation Measure 2

Willow Flycatcher Conservation Measures 1, 2, 3, and 4

Brown Pelican Conservation Measure 2

Exhibit D

Use of Party Funds

<i>Expenditure</i>	<i>Millions (present value as of 2003)</i>
Environmental Mitigation Requirements	
Salinity Control of Salton Sea	\$ 50.0
Other Environmental Mitigation Requirements	<u>\$ 83.0</u>
Total Environmental Mitigation Requirements	\$133.0

Exhibit E

Party Commitments to Fund Environmental Mitigation Costs

<i>Party</i>	<i>Amount (present value as of 2003)</i>
Imperial Irrigation District	\$44,061,350
Coachella Valley Water District	\$36,717,791
San Diego County Water Authority	\$52,220,859
TOTAL	\$133,000,000

## **EXHIBIT C**



EXHIBIT C  
(Including Exhibits C-1, C-2 and C-3)  
PAYMENT SCHEDULES

# EXHIBIT C-1

CVWD JPA Payments			
	Year		27.61%
0	2003	\$	1,645,504
1	2004	\$	726,170
2	2005	\$	773,682
3	2006	\$	924,507
4	2007	\$	1,058,375
5	2008	\$	1,546,371
6	2009	\$	5,724,756
7	2010	\$	1,947,996
8	2011	\$	2,169,002
9	2012	\$	2,458,299
10	2013	\$	3,688,032
11	2014	\$	3,720,930
12	2015	\$	4,272,431
13	2016	\$	5,803,865
14	2017	\$	7,182,291
15	2018	\$	11,875,345
16	2019	\$	745,350
17	2020	\$	738,869
18	2021	\$	2,697,555
19	2022	\$	2,706,745
20	2023	\$	6,953,711
21	2024	\$	2,748,523
22	2025	\$	1,446,565
23	2026	\$	-
24	2027	\$	-
25	2028	\$	-
26	2029	\$	-
27	2030	\$	-
28	2031	\$	-
29	2032	\$	-
30	2033	\$	-
31	2034	\$	-
32	2035	\$	-
33	2036	\$	-
34	2037	\$	-
35	2038	\$	-
36	2039	\$	-
37	2040	\$	-
38	2041	\$	-
39	2042	\$	-
40	2043	\$	-
41	2044	\$	-
42	2045	\$	-
43	2046	\$	-
44	2047	\$	-
45	2048	\$	-
Nominal:		\$	73,554,872
6.0%	PV:	\$	36,717,791

EXHIBIT C-2  
IID JPA Payments

<i>Year</i>	
2003	\$ 131,395
2004	\$ 270,674
2005	\$ 418,191
2006	\$ 574,316
2007	\$ 739,432
2008	\$ 761,615
2009	\$ 941,356
2010	\$ 1,131,196
2011	\$ 1,331,579
2012	\$ 1,542,967
2013	\$ 1,765,841
2014	\$ 1,818,816
2015	\$ 1,873,380
2016	\$ 1,929,582
2017	\$ 1,987,469
2018	\$ 2,661,221
2019	\$ 3,373,610
2020	\$ 4,126,346
2021	\$ 4,473,828
2022	\$ 4,608,043
2023	\$ 4,746,284
2024	\$ 4,888,673
2025	\$ 5,035,333
2026	\$ 5,186,393
2027	\$ 5,341,985
2028	\$ 5,502,244
2029	\$ 5,667,311
2030	\$ 5,837,331
2031	\$ 6,012,451
2032	\$ 6,192,824
2033	\$ 6,378,609
2034	\$ 6,569,967
2035	\$ 6,767,066
2036	\$ 6,970,078
2037	\$ 7,179,181
2038	\$ 7,394,556
2039	\$ 7,616,393
2040	\$ 7,844,884
2041	\$ 8,080,231
2042	\$ 8,322,638
2043	\$ 8,572,317
2044	\$ 8,829,487
2045	\$ 9,094,371
2046	\$ 9,367,202
2047	\$ 9,648,218
Cumulative	\$209,506,885
Present Value	\$ 44,061,350

# EXHIBIT C-3

SDCWA JPA Payments			
	Year		39.26%
0	2003	\$	2,340,273
1	2004	\$	1,032,775
2	2005	\$	1,100,347
3	2006	\$	1,314,855
4	2007	\$	1,505,244
5	2008	\$	2,199,283
6	2009	\$	8,141,875
7	2010	\$	2,770,483
8	2011	\$	3,084,803
9	2012	\$	3,496,247
10	2013	\$	5,245,201
11	2014	\$	5,291,989
12	2015	\$	6,076,346
13	2016	\$	8,254,386
14	2017	\$	10,214,814
15	2018	\$	16,889,380
16	2019	\$	1,060,053
17	2020	\$	1,050,836
18	2021	\$	3,836,522
19	2022	\$	3,849,593
20	2023	\$	9,889,722
21	2024	\$	3,909,010
22	2025	\$	2,057,337
23	2026	\$	-
24	2027	\$	-
25	2028	\$	-
26	2029	\$	-
27	2030	\$	-
28	2031	\$	-
29	2032	\$	-
30	2033	\$	-
31	2034	\$	-
32	2035	\$	-
33	2036	\$	-
34	2037	\$	-
35	2038	\$	-
36	2039	\$	-
37	2040	\$	-
38	2041	\$	-
39	2042	\$	-
40	2043	\$	-
41	2044	\$	-
42	2045	\$	-
43	2046	\$	-
44	2047	\$	-
45	2048	\$	-
Nominal:		\$	104,611,375
6.0%	PV:	\$	52,220,859

## **EXHIBIT D**

## EXHIBIT D

### SCHEDULE FOR PAYMENT TO IID FOR MITIGATION WATER

<i>Year</i>	Mitigation Water	<i>Mitigation Payments</i>
2003	5,000	\$454,335
2004	10,000	\$933,658
2005	15,000	\$1,439,001
2006	20,000	\$1,971,431
2007	25,000	\$2,532,056
2008	25,000	\$2,601,688
2009	30,000	\$3,207,881
2010	35,000	\$3,845,447
2011	40,000	\$4,515,654
2012	45,000	\$5,219,814
2013	70,000	\$8,343,002
2014	90,000	\$11,021,702
2015	110,000	\$13,841,421
2016	130,000	\$16,807,889
2017	150,000	\$19,927,045

- Present Value of Payments: \$50 million
- Interest rate: 6% per Exhibit A of Environmental Cost Sharing Agreement

**EXHIBIT E**

EXHIBIT E  
IID PAYMENTS TO SALTON SEA RESTORATION FUND

Year	
2003	\$29,638
2004	\$61,054
2005	\$94,329
2006	\$129,545
2007	\$166,789
2008	\$171,793
2009	\$212,336
2010	\$255,157
2011	\$300,356
2012	\$348,038
2013	\$398,310
2014	\$410,259
2015	\$422,567
2016	\$435,244
2017	\$448,301
2018	\$600,275
2019	\$760,965
2020	\$930,755
2021	\$1,009,134
2022	\$1,039,408
2023	\$1,070,590
2024	\$1,102,708
2025	\$1,135,789
2026	\$1,169,863
2027	\$1,204,959
2028	\$1,241,108
2029	\$1,278,341
2030	\$1,316,691
2031	\$1,356,192
2032	\$1,396,878
2033	\$1,438,784
2034	\$1,481,947
2035	\$1,526,406
2036	\$1,572,198
2037	\$1,619,364
2038	\$1,667,945
2039	\$1,717,983
2040	\$1,769,523
2041	\$1,822,608
2042	\$1,877,287
2043	\$1,933,605
2044	\$1,991,613
2045	\$2,051,362
2046	\$2,112,903
2047	\$2,176,290
Cumulative Value	\$47,257,190
Present Value	\$9,938,650



**AGREEMENT BETWEEN  
THE IMPERIAL IRRIGATION DISTRICT  
AND THE DEPARTMENT OF WATER RESOURCES  
FOR THE TRANSFER OF COLORADO RIVER WATER**

This Agreement is made and entered into between the Imperial Irrigation District (hereinafter “Imperial”) and the California Department of Water Resources (hereinafter the “Department”).

**RECITALS**

1. Legislation to implement the Colorado River Quantification Settlement Agreement (QSA) and State Salton Sea restoration actions (hereinafter “implementing legislation”) was enacted in 2003. The implementing legislation comprised SB 277 (Ch. 611, Stats. of 2003), SB 317 (Ch. 612, Stats. of 2003), and SB 654 (Ch. 613, Stats. of 2003). The implementing legislation found that restoration of the Salton Sea was in the State of California and national interest, and directed that specified actions be taken by the State of California to facilitate restoration. Among other things, the implementing legislation directed the Secretary for Resources to undertake a Salton Sea Restoration Study, established a Salton Sea Restoration Fund administered by the Department of Fish and Game (hereinafter “DFG”), and called for the Department of Water Resources (hereinafter “Department”) to acquire water from Imperial and to use the water or the proceeds from its sale to the Metropolitan Water District of Southern California (hereinafter “Metropolitan”) to benefit Salton Sea restoration.
2. SB 317 amended Section 2081.7 of the Fish and Game Code to require that Imperial make available to the Department 800,000 acre-feet (AF) of water obtained through conservation methods selected by Imperial, at a price of \$175/AF annually adjusted for inflation. Imperial is further required to make available, at no charge to the Department, a second increment of up to 800,000 AF of similarly conserved water through conservation methods selected by Imperial. The Department is to be responsible for mitigation of environmental impacts relating to use or transfer of the first 800,000 AF increment, and for mitigation of environmental impacts relating to Salton Sea salinity associated with use or transfer of the second 800,000 AF increment.

3. SB 317 further amended Section 2081.7 of the Fish and Game Code to require the Secretary for Resources, as part of undertaking the Salton Sea Restoration Study, to develop a plan for use of the second increment of up to 800,000 AF of conserved water. None of that water may be transferred unless the Secretary finds that transfer is consistent with the preferred alternative for Salton Sea restoration. Depending on the findings of the Restoration Study, it may be necessary for that water to remain available for maintenance of the Salton Sea's ecosystem, rather than be transferred outside of the Salton Basin.

4. SB 317 additionally amended Section 2081.7 of the Fish and Game Code to require that Metropolitan purchase the up to 1,600,000 AF of water made available by Imperial to the Department, at a price of not less than \$250/AF annually adjusted for inflation. The Department, after deducting its costs for administering the transaction and performing related environmental compliance actions and socioeconomic mitigation, is to deposit the proceeds of the transfer into the Salton Sea Restoration Account administered by DFG.

5. SB 654 established a mechanism to implement and allocate environmental mitigation responsibility between California water agencies and the State for the implementation of the QSA. Costs for environmental mitigation requirements up to and not to exceed \$133,000,000 shall be borne by Imperial, the Coachella Valley Water District (hereinafter "CVWD"), and the San Diego County Water Authority (hereinafter "SDCWA"), with the balance to be borne by the State of California. Similarly, SB 654 limits the responsibility for payments by Imperial, CVWD, and SDCWA for Salton Sea restoration to \$30,000,000, except for the provisions under subdivision (c) of Section 2081.7 of the Fish and Game Code, subdivision (f) of Section 1013 of the Water Code, and subdivision (b) of Section 3 of SB 654. Section 3 of SB 654 further provides for the creation of a joint powers agreement to implement these provisions, and Imperial, CVWD, SDCWA, and DFG have executed a contract entitled "Quantification Settlement Agreement Joint Powers Authority Creation and Funding Agreement" (hereinafter "QSA-JPA").

6. Other agreements associated with the QSA cover actions by the Secretary of the Interior to manage deliveries of Colorado River water to Imperial and to Metropolitan to carry out QSA-related water transfers, including the transfers contemplated in this Agreement. The Department

is not a party to those agreements and has no contractual relationship with Interior regarding ordering and delivering Colorado River water.

7. The Colorado River Water Delivery Agreement among the Secretary of the Interior, Imperial, Metropolitan, CVWD, and SDCWA provides that, with respect to the up to 800,000 AF of conserved water to be made available to the Department pursuant to Fish and Game Code Section 2081.7 (c)(1), up to 145,000 AF of that water may be used to meet benchmarks for reductions in agricultural use of Colorado River water contained in Interim Surplus Guidelines set forth in a record of decision by the Secretary of Interior in 2001. It is intended that the 145,000 AF be used for such purpose only in the event that Metropolitan is unable to secure a proposed agreement with Palo Verde Irrigation District for a transfer of agricultural water to Metropolitan. To the extent that all or some portion of the 145,000 AF is used to meet benchmarks, the quantity of water made available to DWR will be correspondingly decreased.

8. The Department and Metropolitan are contemporaneously with this Agreement entering into an agreement for the transfer to Metropolitan of up to 1.6 million AF of Colorado River water to the Department as contemplated by the QSA implementing legislation.

## **AGREEMENT**

Article 1. For the purposes of this agreement:

- (a) “(c)(1) water” refers to the water described in Fish and Game Code Section 2081.7(c)(1) that Imperial is to transfer to the Department pursuant to this Agreement.
- (b) “(c)(2) water” refers to the water described in Fish and Game Code Section 2081.7(c)(2) that Imperial is to transfer to the Department pursuant to this Agreement.

Article 2. This Agreement shall be effective upon execution by the parties and approval of the Agreement by the Department of General Services, but not earlier than the Effective Date as defined in the QSA.

- Article 3. The parties' rights and obligations under this Agreement are subject to and conditional upon compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) and any other applicable environmental and regulatory requirements. The parties recognize and acknowledge that the findings and/or implementation of mitigation obligations pursuant to CEQA/NEPA or other laws to mitigate for environmental impacts of the transfers provided for in this Agreement, including impacts on the Salton Sea, may preclude the Department from engaging in some part or all of the transfers of (c)(1) or (c)(2) water.
- Article 3.1 If the environmental compliance required to be conducted by the Department under this Agreement requires, as to any or all of the water to be transferred, use of a method of conservation different from that selected by Imperial in its sole discretion pursuant to Section 2081.7(c) of the Fish and Game Code be, Imperial shall not be required under this Agreement to transfer that water.
- Article 3.5 The parties' rights and obligations under this Agreement are conditional upon Imperial's obligations under the QSA-JPA referred to in Recital 5 remaining capped as set forth therein and upon the State's obligations therein being supported by sufficient appropriated funds or otherwise made binding in a manner satisfactory to Imperial.
- Article 3.6 This Agreement shall remain in effect only so long as the Department's agreement with Metropolitan, referred to in Recital 7, and the QSA, referred to in Recital 1, remain in effect.
- Article 4. Upon request by the Department, Imperial shall make (c)(1) water available to the Department at Imperial Dam for transfer by the Department in amounts set forth for each year in Attachment A, upon a schedule within each year to be determined by the Department. The Department may request an amount different from the amounts set forth in Attachment A pursuant to subsequent agreement among the Department, Imperial, and Metropolitan amending Attachment A or if the

Department has found a lesser request to be necessary for environmental protection or compliance purposes. It is understood and agreed that the Department need not request (c)(1) water if Metropolitan does not request from the Department the amount specified in Attachment A.

- a. Imperial shall submit water order requests to the Secretary of the Interior and proof of acceptance thereof to entitle Metropolitan to receive the transfer of (c)(1) water so requested on a schedule within the year acceptable to the Department. It is understood that Metropolitan will divert the water from Lake Havasu at the intake to its Colorado River Aqueduct.
- b. Should Imperial use any of the (c)(1) water to meet benchmarks for reduction in agricultural water use pursuant to the Colorado River Water Delivery Agreement to which the Department is not a party, Imperial shall promptly so notify the Department of the amount of water used for this purpose, and such amount shall be deducted from the amount available in the applicable year in Attachment A. If such use occurs in a year on Attachment A where the applicable amount is zero, the deduction shall be from the year 2017 amount on Attachment A. Imperial shall transfer the benchmark water to the Department for retransfer to Metropolitan on the same terms as the (c)(1) water.
- c. Upon water being made available to the Department for diversion by Metropolitan as requested, the Department shall pay Imperial \$175 per AF of water made available. This price shall be adjusted annually from September 1, 2003, for inflation, in accordance with the changes in the gross domestic product implicit price deflator published by the U.S. Bureau of Economic Analysis.
- d. The Department shall provide Imperial with notice at least eighteen months prior to making its request for its first annual transfer of (c)(1) water.

- e. Imperial shall submit quarterly invoices, in triplicate and identified by the Department contract number, to the Department for payment for the water to be made available for the entire year. The Department shall pay for the water in equal quarterly installments independent of the delivery schedule selected within the year. The invoices shall be accompanied by copies of USBR annual delivery schedules documenting the quantity of (c)(1) water to be made available. Within 60 days of receipt of an invoice and accompanying documentation, the Department shall approve payment, in whole or in part. The Department shall notify Imperial in writing of the reason(s) why an invoice is disapproved in whole or in part. Following the Department's approval of an invoice, in whole or in part, the Department shall disburse the funds to Imperial within 60 days.
- f. The Department will reconcile its payments with the USBR's final accounting for the year of water actually made available, in accordance with Article V of the United States Supreme Court decree in *California v. Arizona* dated March 9, 1964, and shall credit or debit, as appropriate, any differences with the USBR's annual reduction accounting for Imperial's cap that differs from the annual transfer amount and make any adjustment against the next year's payment to Imperial.

Article 4.5     The acquisition by the Department of (c)(1) water, and Imperial's obligation to make (c)(1) water available, are conditional upon the Department's assuming responsibility for any and all environmental processes, environmental impacts, and mitigation costs, including those related to Salton Sea salinity, related to the use or transfer of (c)(1) water.

Article 5.     Upon request by the Department, Imperial shall make (c)(2) water available to the Department at Imperial Dam for transfer by the Department in amounts set forth for each year in Attachment B, upon a schedule within each year to be determined by the Department. The Department may request amounts different from the amounts set forth in Attachment B pursuant to subsequent agreement among the

Department, Imperial and Metropolitan amending Attachment B or if Department has found a lesser request to be necessary for environmental protection or compliance purposes. It is understood and agreed that the Department need not request (c)(2) water if Metropolitan does not request from the Department the amount specified in Attachment A.

- a. Imperial shall submit water order requests to the Secretary of the Interior and proof of acceptance thereof to entitle Metropolitan to receive the transfer of (c)(1) water so requested on a schedule within the year acceptable to the Department. It is understood that Metropolitan will divert the water from Lake Havasu at the intake to its Colorado River Aqueduct.
- b. Imperial shall make (c)(2) water available to the Department at no cost to the Department, other than for the Department's payment of environmental and socioeconomic costs as set forth in this Agreement.
- c. The Department shall provide Imperial with notice at least twelve months prior to making its request for transfer of (c)(2) water.
- d. The Department shall not request transfer of, and Imperial shall not make available, any (c)(2) water under this Agreement unless the Secretary of the Resources Agency of the State of California has first found that such transfer is consistent with the preferred alternative for Salton Sea restoration developed pursuant to Fish and Game Code Section 2081.7(e)(2)(C).

Article 5.5 The acquisition by the Department of (c)(2) water, and Imperial's obligation to make (c)(2) water available, are conditional upon the Department's assuming responsibility for any and all environmental processes, environmental impacts, and mitigation costs relating to Salton Sea salinity related to the use or transfer of (c)(2) water.

- Article 6. Notwithstanding the requirements of Articles 4 and 5 that (c)(1) water and (c)(2) water shall be made available at Imperial Dam as to allow diversion at Metropolitan's Colorado River Aqueduct intake at Lake Havasu, the Department and Imperial may, by future agreement, designate a different location at which the (c)(2) water is to be made available, in order for the Department to implement mitigation measures related to the transfers under this Agreement. Making water available at an alternative location will likely require the use of facilities owned or under the control of Imperial. The Department and Imperial agree to negotiate in good faith such future agreement, the need for which will depend upon the mitigation measures that are actually developed.
- Article 6.5 The Department will mitigate for socioeconomic impacts of the transfer of (c)(1) and (c)(2) water created by Imperial through following to the extent that those impacts are identified in the report required by Section 2 of SB 277, referred to in Recital 1, and such impacts shall be determined pursuant to the process described in Attachment C.
- Article 7. Imperial shall cause the amount of (c)(1) and (c)(2) water made available to the Department each year at Imperial Dam to be separately identified in the accounting prepared by the USBR in accordance with Article V of the United States Supreme Court decree in *Arizona v. California* dated March 9, 1964. Imperial shall further cause such amount of water to be subtracted from USBR's approved deliveries to Imperial so it can be added to USBR's approved deliveries to Metropolitan at the intake to Metropolitan's Colorado River Aqueduct at Lake Havasu, through agreements to which the Department is not a party.
- Article 8. The term of this Agreement shall be from its effective date to December 31, 2018, but may be extended upon written agreement of the parties.
- Article 9. This contract is not assignable.
- Article 10. The parties shall exercise reasonable good faith efforts to resolve any dispute that may arise under this agreement, including non-binding mediation. In addition,



Imperial agrees to enter into good faith discussions with Metropolitan and the Department for purposes of considering an amendment of the schedules in Attachment A and Attachment B in a mutually satisfactory manner.

Article 11. Both parties hereto have participated in the drafting of all the provisions of this Agreement.

Article 12. All notices, requests, or demands under this Agreement shall be in writing, and shall be made to:

To Imperial:

Imperial Irrigation District  
Attn. General Manager  
P.O. Box 937  
Imperial, CA 92251

To the Department:

Department of Water Resources  
Attn.: Director

Address for mailing:

P.O. Box 942836  
Sacramento, CA 94236-0001

Address for delivery:

1416 Ninth Street  
Sacramento, CA 95814-5515

Article 13. A party may change its address upon written notice to the other party.

Article 14. This Agreement, including any exhibits attached hereto, constitutes the final, complete, and exclusive statement of the terms of the Agreement between the parties, and supersedes all prior and contemporaneous understandings or agreements of the parties as to the matters contained herein.

Article 15. This Agreement may be amended only by written agreement of the parties.

Article 16. No waiver of a breach, failure of condition, or any right or remedy contained or granted by the provisions of this Agreement shall be effective unless made in writing by the waiving party. No waiver of a breach, failure of a condition, or right or remedy shall be construed to be a waiver of any other breach, failure, right

or remedy. No waiver shall constitute a continuing waiver unless the writing so specifies.

Article 17. Notwithstanding anything in this Agreement to the contrary, each party agrees to proceed with reasonable diligence and use reasonable good faith efforts to jointly defend any lawsuit or administrative proceeding by any person other than the parties challenging the legality, validity, or enforceability of this Agreement.

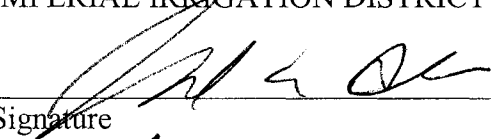
Article 18. Notwithstanding any other provision of this agreement, nothing herein is intended to constitute consent by the State of California or any of its departments, agencies, commissions, or boards to suit in any court described in Article III of the U.S. Constitution. This agreement shall not waive, or be interpreted as waiving, the State of California's sovereign immunity under the Eleventh Amendment or any other provision of the U.S. Constitution in any present or future judicial or administrative proceeding.

Article 19. This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

Article 20. If the performance, in whole or in part, of the obligations of the respective parties under this Agreement is hindered, interrupted, or prevented by wars, strikes, lockouts, fire, acts of God or by other acts of military authority, or by any cause beyond the control of the respective parties hereto, whether similar to the causes herein specified or not, such obligations of the respective parties under this Agreement shall be suspended to the extent and for the time the performance thereof is affected by any such act. Upon the cessation of any such hindrance, interruption, or prevention, both parties shall become obligated to resume and continue performance of their respective obligations under this Agreement. Notwithstanding any act described in this Article, the parties shall diligently undertake all reasonable effort to perform this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.


IMPERIAL IRRIGATION DISTRICT

  
Signature

Date: 10-10-03

PRESIDENT  
Title

Approved as to legal form and sufficiency:

  
General Counsel

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

Date: 10/10/03

  
for Interim Director

## **EXHIBIT A**

## Attachment A

"(c)(1)Water"

QSA Agreement Year	Calendar Year	Salton Sea Restoration Increment (KAF)	ISG Backfill*
1	2003	0	
2	2004	0	
3	2005	0	
4	2006	0	up to 25 KAF
5	2007	0	
6	2008	20	
7	2009	40	up to 50 KAF plus any unused from 2006
8	2010	60	
9	2011	80	
10	2012	100	up to 70 KAF plus any unused from 2006 and 2009
11	2013	100	
12	2014	100	
13	2015	100	
14	2016	100	
15	2017	100	

\* Not to exceed 145 KAF in the aggregate, and not to reduce inflow to the Salton Sea by more than 72.5 KAF in the aggregate.

## **EXHIBIT B**

## Attachment B

"(c)(2) Water"

QSA Agreement Year	Calendar Year	Salton Sea Mitigation Increment (KAF)
1	2003	5
2	2004	10
3	2005	15
4	2006	20
5	2007	25
6	2008	25
7	2009	30
8	2010	35
9	2011	40
10	2012	45
11	2013	70
12	2014	90
13	2015	110
14	2016	130
15	2017	150

## **EXHIBIT C**



## **Attachment C**

The purpose of this Attachment C is to provide guidelines for the estimation and measurement of socioeconomic impacts from land fallowing and to establish the timeline for implementation of defined tasks assigned to the Economists Panel (“Panel”) established pursuant to Article 6.5. The Panel shall conduct its studies in accordance with the guidelines and timelines presented below.

### **Estimation and Measurement of Socioeconomic Impacts**

The Panel shall develop and implement a Socioeconomic Methodology to estimate and measure the annual and cumulative socioeconomic impacts of land fallowing through the development and use of a Regional Economic Model, as corroborated by evidence from available data on countywide economic conditions and supplemental economic studies of the income and employment of third parties, and evaluated for reliability by standard sensitivity analysis techniques.

1. *Regional Economic Model.* Regional Economic Model shall be based on any necessary adjustments of the standard IMPLAN Model for the specific economic circumstances of Imperial County and shall include the following considerations in the construction of the Social Accounting Matrix (SAM):
  - (a) The Panel shall identify the major industries in Imperial County and eliminate any sectors not relevant to the Imperial County economy from the national version of IMPLAN.
  - (b) The Panel shall review and adjust, where necessary, the pattern of industry purchases of capital, labor and intermediate goods to reflect any differences between the structure of the economy of Imperial Valley and the structure of the SAM of the national version of IMPLAN. In considering adjustments to the coefficients of the agricultural sector, the Panel shall consider relevant data available from California and Arizona cooperative extension reports, direct survey evidence, and other credible sources.
  - (c) The Panel shall consider adjustments to the national expenditure coefficients from the national version of IMPLAN based on credible information pertaining to the expenditure patterns of recipients of capital and labor income in Imperial County.
  - (d) The Panel shall consider adjustments to the local and state government coefficients in the national version of IMPLAN based on credible information available from Imperial County governmental agencies and the California Franchise Tax Board.
  - (e) The Panel shall balance any adjustments made to the SAM by a commonly accepted method.

2. *Estimation of Socioeconomic Impacts.* The Panel shall use the Regional Economic Model to estimate the annual and cumulative third party socioeconomic impacts of land fallowing for the specific circumstances of Imperial County including the following considerations:

- (a) Third-party impacts are defined as (i) changes in the after-tax income of individuals or entities residing in Imperial County not participating in the IID land fallowing program; and (ii) changes in the tax receipts of local governments within Imperial County.
- (b) The Panel's determination of the crop acreage fallowed under the IID fallowing program shall be based on a negotiated method of utilizing information from cropping history of land fallowed, cropping patterns after land re-enters production, and other relevant information related to the economic conditions of crop markets and other relevant factors influencing cropping patterns.
- (c) The Panel's determination of crop yields for land fallowed shall be based on a negotiated method using average crop yields in Imperial Valley as adjusted by credible evidence indicating that the crop yields of fallowed lands are expected to differ from average countywide crop yields.
- (d) The Panel's determination of crop revenues from fallowed land shall be based on the average price for the crop fallowed (unless credible evidence can be generated regarding crop prices on fallowed lands) and the adjusted crop yield of fallowed land determined pursuant to 2(c).
- (e) Determination of socioeconomic impact of land fallowing shall also consider the economic stimulus within Imperial County from contract payments received for land fallowing. The Panel's determination shall consider the implications of the mix of resident/nonresident landowners participating in the land fallowing program and the landowner/tenant split of IID land fallowing payments. The estimate of the economic stimulus shall also consider pro forma income tax liabilities of recipients of IID land fallowing payments. The Panel shall develop a method for annualizing any up front payments receipts by participants in an IID land fallowing program. The Panel shall also consider how the recipient of any up front payments may affect savings and current consumption and the pattern of expenditures. If there is credible evidence that recipients of IID land fallowing payments would invest in farming capital, then the Panel shall consider the impact of such investment on the economy of Imperial Valley.
- (f) Estimates of the impacts of land fallowing shall also include the stimulus effect of other components of IID land fallowing program, including dust/weed mitigation, IID program administration and environmental mitigation. Impact measurement shall also consider the stimulus effect of government grants for public works and business investment

programs to facilitate economic development, but only if made available primarily to offset the socioeconomic impacts of land fallowing.

- (g) Estimates of the impact of IID land fallowing on local tax revenues shall consider the impact of the IID land fallowing program on local tax bases.
  - (h) Determination of socioeconomic impact of land fallowing shall also consider credible evidence concerning the impact of the land fallowing program on land productivity.
  - (i) Calculation of socioeconomic impacts shall also include a sensitivity analysis of model outputs using a method to be negotiated. Sensitivity analysis is intended to assess the credibility of model outputs resulting from uncertainties about the value of key parameters in the regional economic model. Analysis may also consider qualitative factors such as specification of production functions, role of technological change and other capital investments, and other factors.
3. *Comparison of Estimated Impacts with County Economic Statistics.* Estimates of the socioeconomic impacts of land fallowing shall be corroborated with a negotiated method of examining evidence from countywide economic data on income, employment, and other relevant economic data. The negotiated method shall consider the statistical validity of testing the estimated magnitude of the socioeconomic impacts of land fallowing with countywide data. If the examination of county economic statistics provides statistically reliable information that the estimates from the Regional Economic Model are materially inaccurate, then the Panel shall make any necessary adjustments to the Regional Economic Model.
4. *Longitudinal Analysis.* The longitudinal study undertaken pursuant to Section 14.5(c)(vi) shall consider individuals providing labor and material inputs to farmers in the Imperial Valley. The study shall examine the incidence and duration of unemployment resulting from fallowing, any adjustments made by businesses providing agricultural services, and other factors. Any credible evidence from longitudinal studies shall be considered in determining whether there should be an adjustment in the funding requirements of the Local Entity.

### **Timeline for Implementation of Defined Tasks**

The Panel shall conduct their studies within the timelines presented below.

1. *Development of Regional Economic Model.* The Panel shall complete the development of the Regional Economic Model based on any adjustments made pursuant to 1(a)-(e) above within 45 Calendar Days of the commencement of work.
2. *Development of Necessary Methods to Estimate Socioeconomic Impacts.* Within 60 Calendar Days of the commencement of work, the Panel shall submit to the Local Entity and the Authority a written report summarizing the design and identification of necessary

information for the methods required above for the estimation of socioeconomic impacts of land fallowing, including:

- a. the method and information to be used in determining crop acreage fallowed in accordance with Section 2(b)(above);
  - b. the method and information to be used to adjust crop yields for specific lands fallowed relative to the countywide average of crop yields in accordance with 2(c) above;
  - c. any evidence to be relied up to estimate that crop prices for fallowed lands differ from countywide average crop prices in accordance with 2(d) above,
  - d. the methods and information to be used to estimate the economic stimulus within Imperial County from contract payments made for land fallowing in accordance with 2(e) above;
  - e. the methods and information to be used to estimate the economic stimulus from other components of IID fallowing in accordance with 2(f) above;
  - f. the methods and information to be used to estimate the impact of IID land fallowing on local tax revenues in accordance with 2(g) above;
  - g. the methods and information to be used to consider the impact of land fallowing on land productivity in accordance with 2(h) above;
  - h. the specification of the procedures to be relied upon to conduct the sensitivity analyses in accordance with 2(i) above; and
  - i. identification of the specific economic statistics and methods to be used to corroborate the estimated socioeconomic impacts of land fallowing in accordance with 3 above.
3. *Initiation of Longitudinal Study.* Within 75 Calendar Days of the commencement of work, the Panel shall submit to the Local Entity and the Authority a written report describing the study design, anticipated budget, and timing of the longitudinal study to be undertaken pursuant to Section 14.5(c)(vi). The Local Entity and the Authority must approve the proposed study before the Panel can proceed with its study plans.
  4. *Initial Estimates of the Annual and Cumulative Socioeconomic Impact of Land Fallowing.* Within 120 Calendar Days of the commencement of work, the Panel shall provide the Local Entity with a draft report of the estimated Annual and Cumulative Impact of Land Fallowing through Agreement Year 15. The report shall discuss how information expected to become available in subsequent years may require adjustments to the Panel's initial estimates.
  5. *Annual Reporting.* The Panel shall submit an annual report on updated estimated and measured socioeconomic impacts of land fallowing as provided in Section 14.5(c)(ix). The annual report shall include a written work plan and proposed budget for the Panel's activities in the following fiscal year.

**AGREEMENT BETWEEN  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
AND THE DEPARTMENT OF WATER RESOURCES  
FOR THE TRANSFER OF COLORADO RIVER WATER**

This Agreement is made and entered into between the Metropolitan Water District of Southern California (hereinafter “Metropolitan”) and the California Department of Water Resources (hereinafter the “Department”).

**RECITALS**

1. Legislation to implement the Colorado River Quantification Settlement Agreement (QSA) and State Salton Sea restoration actions (hereinafter implementing legislation) was enacted in 2003. The implementing legislation comprised SB 277 (Ch. 611, Stats. of 2003), SB 317 (Ch. 612, Stats. of 2003), and SB 654 (Ch. 613, Stats. of 2003). The implementing legislation found that restoration of the Salton Sea was in the State and national interest, and directed that specified State actions be taken to facilitate restoration. Among other things, the implementing legislation directed the Secretary for Resources to undertake a Salton Sea Restoration Study, established a Salton Sea Restoration Fund administered by the Department of Fish and Game (DFG), and called for the Department of Water Resources (Department) to acquire water from Imperial Irrigation District (Imperial) and to use the water or the proceeds from its sale to the Metropolitan Water District of Southern California (Metropolitan) to benefit Salton Sea restoration.

2. SB 317 amended Section 2081.7 of the Fish and Game Code to require that Imperial make available to the Department 800,000 acre-feet (AF) of water obtained through conservation methods selected by Imperial, at a price of \$175/AF annually adjusted for inflation. Imperial is further required to make available, at no cost to the Department, a second increment of up to 800,000 AF of similarly conserved water. The Department is to be responsible for mitigation of environmental impacts relating to use or transfer of the first 800,000 AF increment, and for mitigation of environmental impacts relating to Salton Sea salinity associated with use or transfer of the second 800,000 AF increment.

3. SB 317 further amended Section 2081.7 of the Fish and Game Code to require the Secretary for Resources, as part of undertaking the Salton Sea Restoration Study, to develop a plan for use of the second increment of up to 800,000 AF of conserved water. None of that water may be transferred unless the Secretary finds that transfer is consistent with the preferred alternative for Salton Sea restoration.

4. SB 317 additionally amended Section 2081.7 of the Fish and Game Code to require that Metropolitan purchase the up to 1,600,000 AF of water made available by Imperial to the Department, at a price of not less than \$250/AF annually adjusted for inflation. The Department, after deducting its costs for administering the transaction and performing related environmental compliance actions, is to deposit the proceeds of the transfer into the Salton Sea Restoration Fund administered by DFG. The Salton Sea Restoration Fund was created by SB 277.

5. SB 317 also provided that Metropolitan shall receive credit against future mitigation obligations under the Lower Colorado River Multi-Species Plan (LCRMSCP) for funds used to purchase the transferred water, to the extent that such funds are spent on projects that contribute to conservation of species identified in the LCRMSCP and that are consistent with the preferred alternative identified in the Salton Sea Restoration Plan. Such crediting mechanism is not addressed in this Agreement because the Department is not a party to the LCRMSCP.

6. Other agreements associated with the QSA cover actions by the Secretary of the Interior to manage deliveries of Colorado River water to Imperial and to Metropolitan to carry out QSA-related water transfers, including transfers contemplated in this Agreement. The Department is not a party to those agreements and has no contractual relationship with Interior regarding ordering and delivering Colorado River water.

7. The Department and Imperial are contemporaneously with this Agreement entering into an agreement for the transfer by Imperial of up to 1.6 million acre-feet of Colorado River water to the Department as contemplated by the QSA implementing legislation (hereinafter "Transfer Agreement").

## **AGREEMENT**

Article 1. For the purposes of this agreement:

- (a) “(c)(1) water” refers to the water described in Fish and Game Code Section 2081.7(c)(1) that Imperial transfers to the Department pursuant to the agreement between the Department and Imperial referred to in Recital 2.
- (b) “(c)(2) water” refers to the water described in Fish and Game Code Section 2081.7(c)(2) that Imperial transfers to the Department pursuant to the agreement between the Department and Imperial referred to in Recital 3.

Article 2. This Agreement shall be effective upon execution by the parties and approval of the Agreement by the Department of General Services, but not earlier than the Effective Date as defined in the QSA.

Article 3. The parties’ rights and obligations under this Agreement are subject to and conditional upon compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) and any other environmental and regulatory requirements. The parties recognize and acknowledge that the findings and/or implementation of mitigation obligations pursuant to CEQA/NEPA or other applicable laws to mitigate for environmental impacts of the transfers provided for in this Agreement, including impacts on the Salton Sea, may preclude the Department from engaging in some part or all of the transfers of (c)(1) or (c)(2) water.

Article 3.5. This Agreement shall remain in effect only so long as the Department’s agreement with Imperial, referred to in Recital 7, and the QSA, referred to in Recital 1, remain in effect.

Article 3.6. Within 60 days of the effective date of this Agreement, Metropolitan shall transfer \$100,000 to the Department for the Department to apply to the initial costs of administering this Agreement, including environmental compliance costs. Metropolitan shall, upon request of the Department, provide to the Department such additional funds as may be necessary to cover the initial costs of administration. These advances, which shall not exceed \$500,000 in the aggregate without Metropolitan's prior written consent, shall be credited against Metropolitan's obligations under Articles 4(b), 6, 7(b) and 9. The Department and Metropolitan agree that all such costs thereafter will be charged to, deducted from, or credited against the amounts paid by Metropolitan to the Department for water transferred under this Agreement.

Article 4. Metropolitan shall accept the transfer of (c)(1) water from the Department in accordance with Article 8, as made available by Imperial pursuant to the agreement between the Department and Imperial referred to in Recital 7. By December 1 of the year preceding, Metropolitan shall submit to the Department the following:

- a. A proposed schedule upon which Metropolitan desires the water to be made available within the year for which the request is being made.
- b. Payment for the entire annual amount set forth in the schedule established pursuant to Article 8.5. The price shall be \$250 per acre-foot. This price shall be adjusted annually from September 1, 2003, for inflation, in accordance with the changes in the gross domestic product implicit deflator published by the U.S. Bureau of Economic Analysis.

Article 4.5. The Department may not transfer to Metropolitan an annual amount different from the amounts established in accordance with Article 8.5 without Metropolitan's prior written consent.



- Article 5. The Department shall forward the schedule established in accordance with Article 8.5 to Imperial for purpose of Imperial's making the (c)(1) water available in accordance therewith.
- Article 5.5. The Department shall not transfer any (c)(1) water to any person other than Metropolitan, or assign any of its rights under the Transfer Agreement between the Department and Imperial, without the prior written consent of Metropolitan.
- Article 6. The Department shall deposit Metropolitan's payment under Article 4(b) in an interest-bearing account. The use of this account shall be exclusively for purposes of this agreement and for use in paying costs and forwarding funds in the fulfillment of the Department's obligations under the implementing legislation described in Recital 1. If the water requested or any part of it is not in fact available for Metropolitan to divert, the Department shall remit to Metropolitan the portion of Metropolitan's payment that covers the unavailable water, plus the interest accrued on that portion. Beyond returning the appropriate portion of Metropolitan's payment plus interest as provided in this Article, the Department shall have no further responsibility to Metropolitan for water not made available under this Agreement, provided that the Department is and continues to be in compliance with this Agreement. The remedy described in this Article is the sole and exclusive non-equitable remedy for any and all damages arising out of the Department's failure to make water available.
- Article 6.5. The acquisition by the Department of (c)(1) water, and Metropolitan's obligation to pay for (c)(1) water, are conditional upon the Department's assuming responsibility for any and all environmental processes, environmental impacts including air quality impacts, and mitigation costs, including those related to Salton Sea salinity, related to the transfer of (c)(1) water.
- Article 7. Metropolitan shall accept the transfer of (c)(2) water from the Department in accordance with the schedule established in accordance with Article 8.5, as made available by Imperial pursuant to the agreement between the Department and

Imperial referred to in Recital 7. By December 1 of the year preceding, Metropolitan shall submit to the Department the following:

- a. A proposed schedule upon which Metropolitan desires the water to be made available within the year for which the request is being made.
- b. Payment for the entire annual amount set forth in the schedule established pursuant to Article 8.5. The price shall be \$250 per acre-foot. This price shall be adjusted annually from September 1, 2003, for inflation, in accordance with the changes in the gross domestic product implicit deflator published by the U.S. Bureau of Economic Analysis.
- c. No (c)(2) water shall be available for transfer to Metropolitan unless the Secretary of the Resources Agency of the State of California has first found that such transfer is consistent with the preferred alternative for Salton Sea restoration developed pursuant to Fish and Game Code Section 2081.7(e)(2)(C).
- d. Metropolitan acknowledges that the quantity of (c)(2) water available to it will reflect requirements in the Colorado River Water Delivery Agreement among the Secretary of the Interior, Metropolitan, Imperial, Coachella Valley Water District, and San Diego County Water Authority that part of the (c)(2) water shall be used to meet specified benchmarks for reductions in agricultural use of Colorado River water in the event that Metropolitan is unable to secure a proposed agreement with Palo Verde Irrigation District for transfer of agricultural water to Metropolitan.

Article 8. The Department shall forward each schedule established in accordance with Article 8.5 to Imperial for purpose of Imperial's making the (c)(1) water or the (c)(2) water, as the case may be, available in accordance therewith.

Article 8.5. The Department will transfer to Metropolitan the amounts set forth in a schedule for (c)(1) water and a schedule for (c)(2) water determined by mutual agreement between the Department and Metropolitan. Notwithstanding anything to the contrary in this Agreement, no water will be tendered or transferred to Metropolitan under this Agreement until such schedules are mutually agreed upon. Any such schedule established in accordance with the foregoing shall be subject to change by the Department, if and to the extent the Department has determined that transferring a lesser amount than called for by any such schedule is necessary for environmental protection and compliance purposes, in which event, such schedule shall be modified to reflect such determination.

Article 8.6. The Department shall not transfer any (c)(2) water to any person other than Metropolitan, or assign any of its rights under the Transfer Agreement between the Department and Imperial, without the prior written consent of Metropolitan.

Article 9. The Department shall deposit Metropolitan's payment under Article 7(b) in an interest-bearing account. If the water requested or any part of it is not in fact available for Metropolitan to divert, the Department shall remit to Metropolitan the portion of Metropolitan's payment that covers the unavailable water, plus the interest accrued on that portion. Beyond returning the appropriate portion of Metropolitan's payment plus interest as provided in this Article, the Department shall have no further responsibility to Metropolitan for water not made available under this Agreement, provided that the Department is and continues to be in compliance with this Agreement.

Article 9.5. The acquisition by the Department of (c)(2) water, and Metropolitan's obligation to pay for (c)(2) water, are conditional upon the Department's assuming responsibility for any and all environmental processes, environmental impacts (including air quality impacts), and mitigation costs relating to Salton Sea salinity related to the transfer of (c)(2) water.

Article 10. The quantity of water made available to Metropolitan each year at Imperial Dam and delivered to the Colorado River Aqueduct at Lake Havasu will be determined in the accounting prepared by the U.S. Bureau of Reclamation (USBR) in accordance with Article V of the United States Supreme Court decree in *Arizona v. California* dated March 9, 1964. The Department shall have no responsibility for USBR's accounting of the quantity of water made available to Metropolitan.

Article 10.5. The following contract administration provisions shall apply with regard to the notifications, interest-bearing account deposits and withdrawals, billing, payment, water exchanges, delivery schedules and water availability accounting processes set forth in this Agreement:

- a. The parties shall designate contract managers who will be responsible for managing and implementing the processes set forth in such Articles.  
Either party may change its designated contract manager at any time by prior written notice to the other party. The initial contract managers are:  
  
For Metropolitan: Chief Executive Officer  
For the Department: Director
- b. All correspondence, notices and other matters relating to the processes set forth in such Articles shall be directed to the appropriate contract manager designated above.
- c. The contract managers will develop and amend from time to time written administrative protocols, subject in each case to the approval of both parties or their delegates, that will aid the parties' administration of this Agreement.

Article 11. The term of this agreement shall be from its effective date to December 31, 2018, but may be extended upon written agreement of the parties.

- Article 12. This contract is not assignable.
- Article 13. Nothing in this Agreement shall be construed to modify, amend, or otherwise affect in any way any obligations or rights the Department has, or any obligations or rights that Metropolitan has, under the water supply contract between the Department and Metropolitan entered into on November 4, 1960, as amended and as it may be amended.
- Article 14. The parties shall exercise reasonable good faith efforts to resolve any dispute that may arise under this agreement, including non-binding mediation.
- Article 15. Both parties hereto and their counsel have participated in the drafting of all the provisions of this Agreement.
- Article 16. All notices, requests, or demands under this Agreement shall be in writing, and shall be made to:

To Metropolitan:

The Metropolitan Water District  
of Southern California  
Attn.: Chief Executive Officer

Address for mailing:

P.O. Box 54153  
Los Angeles, CA 90054-0153

Address for delivery:

700 North Alameda Street  
Los Angeles, CA 90012-2944  
Telephone: 213-217-6000  
FAX: 213-217-6950

To the Department:

Department of Water Resources  
Attn.: Director

Address for mailing:

P.O. Box 942836  
Sacramento, CA 94236-0001

Address for delivery:


1416 Ninth Street  
Sacramento, CA 95814-5515

- Article 16.5. A party may change its address upon written notice to the other party.
- Article 17. This Agreement, including any exhibits attached hereto, constitutes the final, complete, and exclusive statement of the terms of the Agreement between the parties, and supersedes all prior and contemporaneous understandings or agreements of the parties as to the matters contained herein.
- Article 18. This Agreement may be amended only by written agreement of the parties.
- Article 19. No waiver of a breach, failure of condition, or any right or remedy contained or granted by the provisions of this Agreement shall be effective unless made in writing by the waiving party. No waiver of a breach, failure of a condition, or right or remedy shall be construed to be a waiver of any other breach, failure, right or remedy. No waiver shall constitute a continuing waiver unless the writing so specifies.
- Article 20. Neither Metropolitan nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of any water subject to this agreement before such water has passed Metropolitan's Colorado River Intake; nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water before it has passed Metropolitan's Colorado River Intake.
- Article 21. Notwithstanding anything in this Agreement to the contrary, each party agrees to proceed with reasonable diligence and use commercially reasonable good faith efforts to jointly defend any lawsuit or administrative proceeding by any person (other than Metropolitan or the Department) challenging the legality, validity, or enforceability of this Agreement or any activities contemplated by this Agreement. Metropolitan and the Department shall each bear their own costs of such defense.

- Article 22. Notwithstanding any other provision of this agreement, nothing herein is intended to constitute consent by the State of California or any of its departments, agencies, commissions, or boards to suit in any court described in Article III of the U.S. Constitution. This agreement shall not waive, or be interpreted as waiving, the State of California's sovereign immunity under the Eleventh Amendment or any other provision of the U.S. Constitution in any present or future judicial or administrative proceeding.
- Article 23. This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.
- Article 24. If the performance, in whole or in part, of the obligations of the respective parties under this Agreement is hindered, interrupted, or prevented by wars, strikes, lockouts, fire, acts of God or by other acts of military authority, or by any cause beyond the control of the respective parties hereto, whether similar to the causes herein specified or not, such obligations of the respective parties under this Agreement shall be suspended to the extent and for the time the performance thereof is affected by any such act. Upon the cessation of any such hindrance, interruption, or prevention, both parties shall become obligated to resume and continue performance of their respective obligations under this Agreement. Notwithstanding any act described in this Article, the parties shall diligently undertake all reasonable effort to perform this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

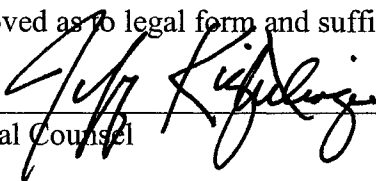
THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

  
\_\_\_\_\_  
Signature

Date: 10-10-03


CEO  
\_\_\_\_\_  
Title

Approved as to legal form and sufficiency:

  
\_\_\_\_\_  
General Counsel

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

Date: 10/10/03

  
\_\_\_\_\_  
for Interim Director



**AGREEMENT BETWEEN THE METROPOLITAN  
WATER DISTRICT OF SOUTHERN CALIFORNIA  
AND THE CALIFORNIA DEPARTMENT OF FISH AND GAME  
FOR THE PAYMENT BY METROPOLITAN OF TWENTY DOLLARS  
PER ACRE-FOOT OF SPECIAL SURPLUS COLORADO RIVER WATER  
RECEIVED BY METROPOLITAN**

THIS AGREEMENT (“Agreement”) is made and entered into as of October 10, 2003, between The Metropolitan Water District of Southern California (hereinafter “Metropolitan”) and the California Department of Fish and Game (hereinafter the “Department”). Metropolitan and the Department are sometimes referred to collectively as the “Parties,” or singularly as a “Party.”

**RECITALS**

A. The Department is a department of the California Resources Agency with jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species under the California Endangered Species Act (Fish and Game Code section 2050 *et seq.*), and other relevant state laws.

B. Metropolitan is a public agency of the State of California incorporated under the Metropolitan Water District Act, Stats. 1969, ch. 209, as amended, codified at Section 109.1 *et seq.* of the Appendix to the California Water Code, engaged in transporting, storing and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura, within the State of California.

C. Section 2081.7 of the California Fish and Game Code was amended by an Act (Stat. 2003 Chap. 612) commonly referenced as SB 317 (the “Kuehl Bill”) which was adopted by the California Legislature to facilitate implementation of the Quantification Settlement Agreement dated October 10, 2003 among Metropolitan, the Imperial Irrigation District (“IID”) and the Coachella Valley Water District (the “QSA”). Also adopted by the California Legislature contemporaneously with the Kuehl Bill in connection with the QSA were two other Acts (Stat. 2003 Chaps. 611 and 613) commonly referenced as SB 277 (the “Ducheny Bill”) and SB 654 (the “Machado Bill”) (the Kuehl Bill, the Ducheny Bill and the Machado Bill are referred to collectively herein as the “QSA Legislation”). Section 2081.7(c)(5), as amended, contemplates that Metropolitan and the Department will enter into this Agreement and requires, in effect, that Metropolitan pay into the Salton Sea Restoration Fund established in accordance with the Ducheny Bill and administered by the Director the sum of twenty dollars (\$20), as adjusted annually for inflation, for each acre-foot of special surplus Colorado River water received by Metropolitan as a result of the reinstatement of certain provisions of the federal Interim Surplus Guidelines (as defined below), subject to certain deductions in the quantity of water subject to this imposition and to the availability of certain credits to Metropolitan deriving from certain expenditures of the Salton Sea Restoration Fund.

D. The California Department of Water Resources (“DWR”) and Metropolitan have entered into an agreement of even date herewith for the acquisition by Metropolitan of up to 1.6 million acre-feet of Colorado River water conserved by IID (the “DWR/MWD Acquisition Agreement”), as contemplated by Section 2081.7(c)(4) of the California Fish and Game Code, as amended by the Kuehl Bill.

## **AGREEMENT**

NOW THEREFORE, the Parties in consideration of the foregoing recitals and the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, Metropolitan and the Department agree to the following terms and conditions of this Agreement:

### **I.**

#### **DEFINITIONS AND RULES OF CONSTRUCTION**

1.1 Definitions. As used in this Agreement these terms, including any grammatical variations thereof, have the following meanings:

(a) “Adjusted Amount” means the Basic Amount, as adjusted pursuant to the Price Adjustment Method as of the beginning of each Year after the first Year of this Agreement.

(b) “Administrative Code” means Metropolitan’s Administrative Code, adopted on January 13, 1987, as amended from time to time, and as in existence on the date of this Agreement, subject to modification to the extent provided in Paragraph 10.10 of this Agreement.

(c) “Arizona Payback Water” means Colorado River water that otherwise would have been available for Consumptive Use by Metropolitan that Metropolitan is required to make available to the State of Arizona or to any agency of such State (“Arizona”) by exchange, reduction in use or any other means, as a result of any basic apportionment shortage suffered by Arizona in any calendar year that the Interim Surplus

Guidelines are in effect or in any calendar year after 2016 prior to the day on which a Flood Control Surplus Release is made by the United States Bureau of Reclamation.

(d) “Basic Amount” means, at any point in time, twenty dollars (\$20.00) per acre-foot of Special Surplus Water, as defined herein.

(e) “Bureau Decree Accounting Record” means the annual compilation by the Bureau of Reclamation of the United States Department of the Interior of records in accordance with Article V of the Decree of the Supreme Court of the United States in Arizona v. California dated March 9, 1964.

(f) “Consumptive Use” means the diversion of water from the main stream of the Colorado River, net of measured and unmeasured return flows. “Consumptively Used” is a grammatical variation of “Consumptive Use.”

(g) “Department” means the California Department of Fish and Game, as defined in Recital A.

(h) “Director” means the Director or Acting Director of the Department.

(i) “DWR” is as defined in Recital D.

(j) “DWR/MWD Acquisition Agreement” is as defined in Recital D, as the same may be amended from time to time.

(k) “Flood Control Surplus Release” means the release of Colorado River Water for purposes of the flood control operation of Hoover Dam and Lake Mead pursuant to the reservoir operating criteria agreement between the United States Army Corps of Engineers and the Bureau of Reclamation of the United States Department of the Interior.

(l) “IID” is as defined in Recital C.

(m) “Interim Surplus Guidelines” means the guidelines used annually by the United States Secretary of the Interior to determine the availability of surplus Colorado River water for release from Lake Mead and use within the states of Arizona, Nevada and California through calendar year 2016, as set forth in the Secretary’s record of decision dated January 16, 2001, including access to Special Surplus Water, as reinstated contemporaneously with the execution of the QSA.

(n) “Metropolitan” means The Metropolitan Water District of Southern California.

(o) “MWD Credits” means the dollar-for-dollar credits to be provided to Metropolitan pursuant to the last sentence of section 2081.7(c)(5) of the California Fish and Game Code, as amended by the QSA Legislation, against any future mitigation obligations of Metropolitan under the Lower Colorado River Multi-Species Conservation Program, as determined and applied in accordance with Paragraph 7.5.

(p) “Price Adjustment Method” means an adjustment to the Adjusted Amount as of January 1, 2004, and as of each January 1 thereafter through 2016, to reflect the change in the annual average since the date hereof (prorating any change for 2003) in the Consumer Price Index for all Urban Consumers-All Items (sometimes called the CPI-U) for Los Angeles – Riverside – Orange County, CA, as published by the United States Bureau of Labor Statistics.

(q) “QSA” is as defined in Recital C.

(r) “QSA Legislation” is as defined in Recital C.

(s) “Quantified Surplus Release” means the release of Colorado River water pursuant to the Bureau of Reclamation’s reservoir spill avoidance strategy, otherwise known as the 70R Strategy, as it may then be in effect.

(t) “Record Release Date” means the date on which the Bureau Decree Accounting Record is released to the public.

(u) “Report” means an annual report by Metropolitan setting forth the quantity of Special Surplus Water Consumptively Used by it in the Year covered by such report and the amount of Metropolitan’s obligation under Paragraph 3.1 for such Year, as determined and justified by Metropolitan with reasonable specificity in such Report, based on the Bureau Decree Accounting Record for such Year and on any other relevant federal documents, subject to audit by the Department pursuant to Paragraph 10.12.

(v) “Salton Sea Restoration Fund” means the fund administered by the Director and established by the California Legislature pursuant to, Chapter 13, Division 3, of the California Fish and Game Code, as added by the QSA Legislation, and into which the payments by Metropolitan under this Agreement are to be deposited.

(w) “Special Surplus Water” means the quantity in acre-feet of Surplus Water that is Consumptively Used by Metropolitan in any Year; provided, however, that in any Year in which there is a Flood Control Surplus Release or a Quantified Surplus Release, the quantity of Special Surplus Water for that Year for purposes of this Agreement shall be deemed to be zero.

(x) “Surplus Water” means the quantity of Colorado River water released by the United States Bureau of Reclamation pursuant to section 2.B. of the Interim Surplus

Guidelines and Consumptively Used by Metropolitan in any Year in excess of the sum of (i) the quantity of such water which would have been released in that Year by the Bureau of Reclamation in a normal or shortage condition pursuant to section 2.A. of such Guidelines and which would have been made available to Metropolitan, (ii) the quantity of unused basic apportionment water released by the Bureau of Reclamation and Consumptively Used by Metropolitan in that Year pursuant to section 1.B. of such Guidelines, and (iii) the quantity of any Arizona Payback Water in that Year.

(y) “Year” means the period commencing on the date hereof and ending on the immediately following December 31, and each calendar year thereafter during the term of this Agreement.

#### 1.2 Rules of Construction.

(a) Unless the context clearly requires otherwise:

- (i) The plural and singular forms include the other;
- (ii) “Shall,” “will,” “must,” and “agrees” are each mandatory;
- (iii) “May” is permissive;
- (iv) “Or” is not exclusive;
- (v) “Includes” and “including” are not limiting; and
- (vi) “Between” includes the ends of the identified range.

(b) Headings at the beginning of articles, paragraphs and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it.

(c) The masculine gender shall include the feminine and neuter genders and vice versa.

(d) The word “person” shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature, except either Metropolitan or the Department or an officer or employee thereof.

(e) Except as specifically provided herein, reference to any agreement (including this Agreement), document, or instrument means such agreement, document, instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

(f) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including any rules and regulations promulgated thereunder.

## **II.**

### **REPRESENTATIONS AND WARRANTIES**

2.1 Representations and Warranties of Metropolitan. As a material inducement to the Department to enter into this Agreement, Metropolitan represents and warrants as follows:

(a) Metropolitan is a metropolitan water district, duly organized, validly existing and in good standing under the laws of the State of California, and subject to



satisfaction or waiver of the conditions set forth in Paragraph 6.1, Metropolitan has all necessary power and authority to perform its obligations hereunder on the terms set forth in this Agreement, and the execution and delivery hereof by Metropolitan and the performance by Metropolitan of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which Metropolitan is a party or by which Metropolitan is bound.

(b) Subject to the satisfaction or waiver of the conditions, as and to the extent provided in Paragraph 6.1, this Agreement is a valid and binding obligation of Metropolitan, enforceable in accordance with its terms, subject to the requirements of applicable law.

2.2 Representations and Warranties of the Department. As a material inducement to Metropolitan to enter into this Agreement, the Department represents and warrants as follows:

(a) The Department has all necessary power and authority to perform its obligations hereunder on the terms set forth in this Agreement.

(b) This Agreement is a valid and binding obligation of the Department, enforceable in accordance with its terms, subject to the requirements of applicable law.

### **III.**

#### **METROPOLITAN'S ANNUAL PAYMENT OBLIGATION TO THE SALTON SEA RESTORATION FUND**

3.1 Amount of Annual Obligation. Metropolitan shall be obligated to pay to the Salton Sea Restoration Fund for each Year commencing in 2004 an amount, if any, equal to the

greater of the Basic Amount or the Adjusted Amount multiplied by the number of acre-feet of Special Surplus Water Consumptively Used by it in that Year.

3.2 Measurement of Special Surplus Water. Metropolitan will provide to the Department by facsimile, within 90 days following the Record Release Date of the Bureau Decree Accounting Record for each Year, a Report pertaining to its Consumptive Use of Special Surplus Water in that Year.

#### **IV.**

#### **PAYMENTS AND ACKNOWLEDGEMENTS**

4.1 Metropolitan Payments. Metropolitan shall pay into the Salton Sea Restoration Fund within 90 days of the date of each Report, the amount, if any, correctly shown in such Report as Metropolitan's obligation under Paragraph 3.1 for the Year of the Report.

4.2 Department Acknowledgements. The Department will acknowledge by written notice to Metropolitan the receipt by the Salton Sea Restoration Fund of each payment received pursuant to Paragraph 4.1. Each notice will specify the date and amount of the subject payment and will be provided by facsimile to Metropolitan within 30 days of the date of the payment.

4.3 Metropolitan Refunds or Credits. In the event that Metropolitan incurs an obligation to the State of Arizona or to any agency of such State for Arizona Payback Water after the date of Metropolitan's payment under Paragraph 4.1, Metropolitan shall be entitled to a refund from the Salton Sea Restoration Fund equal to the amount of such Arizona Payback Water multiplied by the Basic Amount or the Adjusted Amount, whichever was used to determine the amount of Metropolitan's payment under Paragraph 4.1; provided, however, that the aggregate amount of any such refunds shall not exceed the sum of the payments made by Metropolitan

pursuant to this Agreement. Any such refund shall be paid to Metropolitan, with interest at the then California interagency lending rate from the date of such final payment, within 90 days of Metropolitan's notice to the Department setting forth the amount and basis for any such refund. If or to the extent that the Department determines that sufficient monies for payment of any such refund are not available or may not lawfully be withdrawn from the Salton Sea Restoration Fund at such time, the Department agrees that it will include the refund request in its next annual request for appropriation for the Salton Sea Restoration Fund. After December 31, 2016, any notice pertaining to a refund must be provided to the Department no later than 90 days after public notice of a Flood Control Surplus Release. In the event any such refund has not been paid by the Department to Metropolitan prior to the next payment becoming due from Metropolitan, Metropolitan shall show the refund due as a credit toward the payment due from Metropolitan to the Department, and shall deduct such credit in determining the net payment due from Metropolitan to the Department. In the event any such refund shall not be authorized or permitted under applicable law within three years from the date of the first such request, Metropolitan shall be entitled to receive the economic equivalent of such refund in the form of credits by the Department similar to the MWD Credits to be provided pursuant to Paragraph 7.5.

## **V.**

### **TERM**

5.1 Commencement and Termination. This Agreement will commence upon its execution by the Parties and will terminate upon the termination of the QSA; provided, however, that the possibility of a refund which may be due to Metropolitan in future years shall not be an

impediment to the expenditure of all assets of the Salton Sea Restoration Fund. Notwithstanding the foregoing, Metropolitan's payment obligation under Article III hereof shall terminate as of December 31, 2016.

## **VI.**

### **CONDITIONS**

#### **6.1 Conditions to Metropolitan's Obligations Under This Agreement.**

(a) The QSA Legislation is and shall remain in full force and effect and is not amended or modified in any way that is inconsistent with subparagraph (b), or that imposes other requirements pertaining to Metropolitan's Consumptive Use of or entitlements to Colorado River water that are materially adverse to Metropolitan.

(b) Metropolitan does not have, nor will it incur, any liability or responsibility for environmental mitigation requirements (i) for this Agreement, (ii) for any conservation, transfer or other activities associated with the DWR/MWD Acquisition Agreement, or with the Transfer Agreement dated October 10, 2003, between IID and DWR or (iii) for the restoration of the Salton Sea, other than, in each case, as specifically provided in the QSA Legislation or in a written agreement to which Metropolitan is or becomes a signatory party. This limitation on liability and responsibility shall include but not be limited to mitigating impacts associated with rising salinity levels in the Salton Sea, air quality impacts, endangered species impacts and other potential impacts.

(c) Metropolitan is entitled to and will receive the benefit from any MWD Credits to the full extent contemplated by Paragraph 7.5.

6.2 Failure of Conditions. Unless waived by Metropolitan, upon a material failure of any condition described in Paragraph 6.1, any obligation of Metropolitan under Article III hereof shall thereupon be suspended until the earlier of the date any such condition is restored or remedied to the satisfaction of Metropolitan or the date this Agreement is terminated in accordance with Paragraph 5.1, at which time any suspended obligation of Metropolitan shall cease and become null and void without the need for further action by any Party.

## VII.

### COVENANTS

7.1 Applicable Laws. This Agreement and the activities described herein are contingent upon and subject to compliance with all applicable laws, including, to the extent applicable, the National Environmental Policy Act, Title 4, United States Code §§ 4321 et seq.; 40 Code of Federal Regulations §§1500.1 et seq., and the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq.; 14 California Code of Regulations §§ 15000 et seq. This Agreement is also contingent upon and subject to any required regulatory approval by other California agencies. Metropolitan shall have no obligation or liability for costs and expenses in connection with any permits or approvals required as a result of this Agreement or for any such costs and expenses arising from expenditure of the funds paid by Metropolitan pursuant to this Agreement.

7.2 Impact on Acquisition Agreement. Nothing in this Agreement shall be construed to amend the DWR/MWD Acquisition Agreement.

7.3 Use of Proceeds by Salton Sea Restoration Fund. The Parties agree that the funds of the Salton Sea Restoration Fund derived from payments made pursuant to this Agreement are intended to be used for conservation measures, including the program referenced in Fish and Game Code Section 2081.7(d)(3), pursuant to a preferred alternative for restoration as provided in the QSA Legislation, and for measures required to mitigate for the adverse environmental effects caused by implementation of the preferred alternative.

7.4 Limitation on Liability for Environmental Mitigation Requirements. The Department agrees that Metropolitan shall have no liability or responsibility for any environmental mitigation requirements described in Paragraph 6.1(b).

7.5 Determination and Application of MWD Credits. Metropolitan shall receive a credit against future obligations which it may have under the Lower Colorado River Multi-Species Conservation Program ("LCR-MSCP") for funds deposited into the Salton Sea Restoration Fund which are spent for measures which are consistent with the preferred restoration alternative and which contribute to the conservation or mitigation for species which are "covered species" under the LCR MSCP. The Department shall annually determine and inform Metropolitan of the sums spent from the Salton Sea Restoration Fund on restoration projects which contribute to the conservation or mitigation of species covered under the LCR MSCP.

7.6 Covenants of Good Faith. This Agreement is subject to reciprocal obligations of good faith and fair dealing.

## **VIII.**

### **DISPUTE RESOLUTION**

8.1 Reasonable Best Efforts to Resolve by Negotiation. The Parties shall exercise reasonable best efforts to resolve all disputes arising under this Agreement through negotiation between the Department's Regional Manager for Region 6 and Metropolitan's Environmental Planning Team Manager or, if such offices are not then being maintained in either case, between the representatives of the Party or Parties succeeding to the duties and responsibilities of such offices. If that negotiation is unsuccessful in resolving any such dispute, then the Director and the Chief Executive Officer of Metropolitan shall seek to resolve such dispute through direct negotiation between them. In the event such negotiation is unsuccessful, the Parties reserve their respective rights to all legal and equitable remedies.

8.2 Action or Proceeding Between the Parties. Each of the Parties may sue and be sued with respect to this Agreement.

## **IX.**

### **REMEDIES**

9.1 Remedies Generally. If a breach of this Agreement occurs, the non-breaching Party will have all rights and remedies provided at law or in equity against the breaching Party.

9.2 Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise

or delays in exercising any such right or remedy, the non-breaching Party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power, or privilege precludes any other or further exercise of a right, power, or privilege granted by this Agreement or otherwise.

## **X.**

### **GENERAL PROVISIONS**

10.1 No Third-Party Rights. This Agreement is made solely for the benefit of the Parties and their respective permitted successors and assigns (if any). Except for such a permitted successor or assign, no other person or entity may have or acquire any right by virtue of this Agreement.

10.2 Ambiguities. Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement. A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this Agreement, including any amendments or modifications.

10.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of laws provisions.

10.4 Binding Effect; No Assignment. This Agreement is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities. Neither Party may assign any of its rights or delegate any of its duties under this Agreement. Any assignment or delegation made in violation of this Agreement is void and of no force or effect.



10.5 Notices. All notices, requests, demands, or other communications under this Agreement must be in writing, and sent to both addresses of each Party. Notice will be sufficiently given for all purposes as follows:

- *Personal Delivery*. When personally delivered to the recipient. Notice is effective on delivery.
- *First-Class Mail*. When mailed first-class, postage prepaid, to the last address of the recipient known to the Party giving notice. Notice is effective five mail delivery days after it is deposited in a United States Postal Service office or mailbox.
- *Certified Mail*. When mailed certified mail, return receipt requested. Notice is effective on receipt, if a return receipt confirms delivery.
- *Overnight Delivery*. When delivered by an overnight delivery service such as Federal Express, charges prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.
- *Facsimile Transmission*. Notice is effective on receipt, provided that a copy is mailed by first-class mail on the facsimile transmission date.

Addresses for purpose of giving notice are as follows:

To Metropolitan:	<b>The Metropolitan Water District of Southern California</b>
	Attn.: Chief Executive Officer
<i>Address for U.S. mail:</i>	P.O. Box 54153 Los Angeles, CA 90054-0153

*Address for personal or overnight delivery:*

700 North Alameda Street  
Los Angeles, CA 90012-2944  
Telephone: 213-217-6000  
Fax: 213-217-6950

With a copy delivered by the same means and at the same addresses to:

**The Metropolitan Water District of Southern California**

Attn.: General Counsel

To the Department: **The California Department of Fish and Game**

Attn.: Director

*Address for U.S. mail:* 1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, California 95814

*Address for personal or overnight delivery:*

1416 Ninth Street, 12<sup>th</sup> Floor  
Sacramento, California 95814

With a copy delivered by the same means and at the same addresses to:

**The California Department of Fish and Game**

Attn.: General Counsel

(a) A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission by the Party to be notified will be deemed effective as of the first date that notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

(b) A Party may change its address by giving the other Party notice of the change in any manner permitted by this Agreement.

10.6 Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the Agreement between the Parties pertaining to its subject matter and supersedes all prior and contemporaneous understandings or agreements of the Parties. Neither Party has been induced to enter into this Agreement by, nor is either Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

10.7 Time of the Essence. If the day on which performance of any act or the occurrence of any event hereunder is due is not a business day, the time when such performance or occurrence shall be due shall be the first business day (as defined in Section 4507 of the Administrative Code) occurring after the day on which performance or occurrence would otherwise be due hereunder. All times provided in this Agreement for the performance of any act will be strictly construed, time being of the essence of this Agreement.

10.8 Modification. This Agreement may be supplemented, amended, or modified only by the written agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by both Parties.

10.9 Waiver. No waiver of a breach, failure of condition, or any right or remedy contained in or granted by the provisions of this Agreement is effective unless it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of a breach, failure of condition, or right or remedy is or may be deemed a waiver of any other breach, failure, right or remedy, whether similar or not. In addition, no waiver will constitute a continuing waiver unless the writing so specifies.

10.10 Right to Amend the Administrative Code. Notwithstanding anything to the contrary in this Agreement, express or implied, Metropolitan shall have the right to amend the Administrative Code at its sole discretion, except that, for the purposes of this Agreement, no such amendment shall have the effect of changing or modifying this Agreement, unless such effect is first approved by the Director.

10.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

10.12 Audit. Metropolitan and the Department (as administrator of the Salton Sea Restoration Fund) are responsible for assuring the accuracy of their books and records evidencing the performance of their respective obligations under this Agreement. In connection therewith, Metropolitan will have the right to review the books and records of the Department and of the Salton Sea Restoration Fund relating to this Agreement, and the Department will have the right to review Metropolitan's books and records relating to this Agreement, in each case for purposes of determining compliance with the Agreement. Records evidencing compliance with this Agreement shall be maintained by the Parties during the term of this Agreement, and for a period of three years from the date of its termination.

10.13 Sovereign Immunity. Notwithstanding any other provision of this Agreement, nothing herein is intended to constitute consent by the State of California or any of its departments, agencies, commissions, or boards to suit in any court described in Article III of the United States Constitution. This Agreement shall not waive, or be interpreted as waiving, the

State of California's sovereign immunity under the Eleventh Amendment or any other provision of the United States Constitution in any present or future judicial or administrative proceeding.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Approved as to Form:

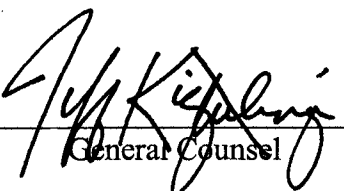
The California Department of Fish and Game

By: \_\_\_\_\_  
General Counsel

By: \_\_\_\_\_  
Director

Approved as to Form:

The Metropolitan Water District of Southern California

By: \_\_\_\_\_  
General Counsel

By: \_\_\_\_\_  
Chief Executive Officer

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 94236-0001  
(916) 653-5791



*October 10, 2003*

Mr. Steve Robbins  
General Manager - Chief Engineer  
Coachella Valley Water District  
Post Office Box 1058  
Coachella, California 92236-1058

Mr. Ron Gastelum  
President and CEO  
Metropolitan Water District of Southern California  
700 North Alameda Street  
Los Angeles, California 90012

I am in receipt of your proposed "Transfer and Exchange Agreement for 35,000 acre-feet" that will be entered into between your two agencies. This Agreement will be one of the agreements related to the implementation of the Quantification Settlement Agreement executed among Imperial Irrigation District, Coachella Valley Water District and Metropolitan Water District of Southern California. Because the QSA sets aside longstanding disputes regarding the transfer and use of Colorado River water in California, the Department of Water Resources supports the 35,000 af Transfer Agreement.

The Agreement will provide for the delivery of a portion of MWD's Colorado River supply to CVWD to facilitate a transfer of MWD's State Water Project water. Under the terms of this Agreement, the Department will continue to deliver the SWP water under the long-term water supply contract between DWR and MWD to an existing point of delivery in MWD's service area at MWD's request. MWD will continue to meet all its obligations, including financial, for the 35,000 af, as required under the long-term water supply contract. The point of delivery and the amount and rate of delivery permitted under MWD's contract would not be changed by this proposal. Accordingly, the proposal comports with existing contractual terms and does not require the Department to take any action.

Congratulations on your accomplishment. If you have any questions or need further information, please call me at (916) 653-7007 or Dan Flory, Chief of DWR's State Water Project Analysis Office, at (916) 653-4313.

Sincerely,

A handwritten signature in black ink that reads "Stephen M. Spear".  
for Michael J. Spear  
Interim Director

cc: Mr. John Coburn  
General Manager  
State Water Contractors  
455 Capitol Mall, Suite 220  
Sacramento, California 95814